United Nations
GENERAL ASSEMBLY
THIRTEENTH SESSION
Official Records

SIXTH COMMITTEE 554th MEETING

Thursday, 2 October 1958, at 3.15 p.m.

NEW YORK

CONTENTS

Chairman: Mr. Jorge CASTAÑEDA (Mexico).

AGENDA ITEM 56

Report of the International Law Commission on the work of its tenth session (A/3859) (continued)

CONSIDERATION OF CHAPTER V (continued)

1. Miss PERERA (Cuba) congratulated the Chairman on his election and expressed the hope that under his guidance the work of the Sixth Committee would be crowned with success. She had been glad to see that the International Law Commission had unanimously decided to request the Secretary-General to authorize its Secretary to attend the fourth meeting of the Inter-American Council of Jurists to be held at Santiago, Chile, (see A/3859, para. 72). Close co-operation between the two bodies was bound to prove valuable to the International Law Commission and to strengthen the world-wide character of its work.

2. Mr. PAL (Chairman of the International Law Commission) thanked the members of the Committee for the warm tributes they had paid to the International Law Commission on its achievements during the first ten years of its existence. He would pass the message on to his colleagues, and in their name, he would like to assure the Committee that the Commission would never lose sight of certain vital principles referred to by the representative of Poland in particular (551st meeting, para. 8), namely, that if it was to be effective, the Commission must retain its broad representative character—which ruled out unduly small committees—and that in codifying international law, the rules it adopted must not be too rigid.

3. It had to be remembered that whereas in 1910 a jurist could have said that international law was an exclusively European field, the situation had changed completely since then. The end of the First World War had seen the stirring of gigantic forces among the non-European peoples, and Europe itself had witnessed the birth of a great Power whose social ideology and economic system were entirely new. The world was in a period of transition. It was therefore essential for every form of civilization to be represented in the Commission; any system of international law must be neutral and take account of the various new ideologies expressing widely-felt human needs.

4. It was on that basis that the International Law Commission, after much discussion, had come to a decision regarding the organization of its future work. Its decisions were, of course, always subject to review by the Sixth Committee. The Commission was not infallible; hence its decision was tentative and experimental.

5. He assured the Committee that the observations made by its members would be passed on to the Commission, which would bear them in mind.

6. Mr. EL-ERIAN (United Arab Republic), referring to the suggestion made by the representative of Ceylon (553rd meeting, para. 29) concerning the publication under United Nations auspices of an international legal review, pointed out that if the intention was to make a formal proposal to that effect, it would in the first place create a procedural difficulty.

7. As to the idea itself, the majority of delegations were in favour of a United Nations legal publication, but it could take either of two distinct forms: it could be a separate periodical or yearbook or, at least to begin with, simply an annex to the Yearbook of the International Law Commission, published on the responsibility of a board of editors independent of the Commission. If the latter course were adopted, the financial implications would probably be less substantial.

8. In any case, the Secretariat could make a general study of the technical, financial and other aspects of the question which could be put before the Committee when it had completed its consideration of the report. The conclusions in the study would in no way prejudge any decision on the subject taken by the Sixth Committee or the General Assembly.

9. Mr. EUSTATHIADES (Greece) favoured such a publication in principle but thought that the Sixth Committee's attitude would depend on the type of publication and its subject matter. A small informal committee might be set up to consider those points in consultation with the secretariat. The Sixth Committee would then be able to take up the discussion again with a clearer idea of what was involved.

10. Mr. PERERA (Ceylon), replying to previous speakers, said that his suggestion had been put forward simply with a view to exploring the possibilities of publishing such review, in compliance with General Assembly resolution 176 (II).

11. He was prepared to accept the suggestions made by the representative of the United Arab Republic, namely that the publication should form an annex to the Yearbook of the International Law Commission and be published on the responsibility of an independent board of editors, and that the Secretariat should be

asked to make a study of the question for consideration by the Sixth Committee when it had completed its work on chapters II and III of the report of the International Law Commission. The suggestion by the representative of Greece that the question should be referred to a small informal committee was equally acceptable.

12. It did not seem to him that the adoption of a draft resolution would give rise to any procedural difficulties. He did not think that the question was essentially bound up with chapter V of the report, and it could be taken up again at the end of the Committee's debates.

13. Mr. ROSENNE (Israel) recalled his delegation's long-standing interest in the publication of an international legal review. He thought it would be better if there could be an exchange of views on the question in the Committee before the Secretariat was asked to prepare a study. To that end the representative of Ceylon might perhaps submit a formal draft resolution which would serve as a basis for the discussion.

14. Mr. TABIBI (Afghanistan) thought the question deserved serious consideration. In his view, the Secretariat ought in the first instance to prepare and distribute a working paper, during the current session or, if that proved impossible, during the next session. The question of submitting a draft resolution and setting up a sub-committee would only arise after that had been done.

15. Mr. DZIRASA (Ghana) thought that the desirability of such a publication should be considered in the light of whether it would provide the Sixth Committee with the organ it needed.

16. The CHAIRMAN thought that, from the procedural point of view, the representative of Ceylon could not make a formal proposal within the framework of the discussion in progress. If Mr. Perera wished to put his suggestion on record, he should do so in the form of a memorandum or working paper. On the other hand, the proposals made by the later speakers were admissible, because they did not call for any specific action by the Assembly.

17. In his opinion, the best course would be to ask the Secretariat to prepare, some time during the following month, a preliminary study on the basis of which the Sixth Committee could resume its consideration of the question, either at the current session or the next one, with special reference to the technical aspects.

18. Mr. STAVROPOULOS (Legal Counsel) said that the Secretariat was quite prepared to undertake a study of the question, but it would first have to have more precise information on the exact purpose of the prospective publication and its financing, since a legal review could not be kept going without adequate resources. He accordingly proposed the establishment of an informal sub-committee or working group to study the question; the Secretariat would then be in a position to produce a study.

19. Mr. EL-EFRIAN (United Arab Republic) supported the proposal.

20. Mr. RAMOS (Argentina) hoped that the terms of reference of such a working group would be flexible enough to enable it to consider substantive questions.

21. Mr. TABIBI (Afghanistan) pointed out that the working group would have to work in collaboration with the Secretariat, on account of the financial implications of the question to be considered.

22. After an exchange of views between Mr. DZIRASA (Ghana), Mr. PERERA (Ceylon) and Mr. CUTTS (Australia), the last-named wholeheartedly supporting the action proposed by Mr. Stavropoulos, the CHAIRMAN proposed that an informal working group be set up, to enable the delegations concerned to consult together; the representative of Ceylon would then submit a memorandum to be used as a basis for the debates of he Sixth Committee.

It was so decided.

CONSIDERATION OF CHAPTER II: ARBITRAL PROCEDURE

23. Mr. PAL (Chairman of the International Law Commission) thought that, at a time when the international community was in process of formation, the importance of chapter II concerning arbitral procedure could hardly be over-estimated. The Preamble to the Charter stated that the peoples of the United Nations were determined to save succeeding generations from the scourge of war and to establish conditions under which justice and respect for obligations could be maintained. The settlement of international disputes was one of the purposes of the United Nations, and one that could be achieved only through organization, indeed, through the achievement of a mental make-up which, at the present time at any rate, might be considered as a challenge to human nature. But there was no alternative to the struggle, if the world was not to fall into the old pattern of national self-interest and war. The time had come to realize that the peaceful development of the peoples of the world could no longer be left to any particular country as part of its policy; it called for the reorganization of world society. Today's problems were not simply a complex extension of the local problems of yesterday; there were new problems affecting the world as a whole. It was the aim of the United Nations to establish an international community entirely governed by law. In the world crisis through which mankind was passing, the sole chance of survival lay in that direction. The economic interdependence of the various regions of the world created both the obligation and the opportunity to enlarge the community governed by the principles of order and justice.

24. But the tendency to place so-called self-interest or national interest above all else had to be reckoned with. That tendency was so deeply rooted in human beings that neither logic nor morality sufficed to hold it in check. The legitimate interests of the community required that commitments should be honoured, but that could not be achieved without the existence of a juridical system.

25. Two world wars had demonstrated the need for a world order. It was in the light of that consideration that the International Law Commission in 1953 had submitted a draft (A/2456, para. 57) designed to ensure respect for arbitral undertakings in conformity with the will of the parties concerned.

26. But since the General Assembly in its resolution 989 (X) had referred the question of arbitral procedure back to the International Law Commission, the Com-

mission had complied with the Assembly's instructions by submitting a set of model rules (A/3859, para. 22). The draft was not intended to create new obligations, but only to protect States which felt the need for certain safeguards to ensure that the other party could not find any loop-hole for evading its obligations. Admittedly the provisions of the model rules at first sight seemed categorical; but it must be remembered that the provisions, in particular those in article 1, only applied in so far as the parties concerned had agreed that they should apply. The model rules were in fact governed throughout by paragraph 4 of the preamble which stated that "The procedures suggested to States parties to a dispute by these model rules shall not be compulsory unless the States concerned have agreed, either in the compromis or in some other undertaking, to have recourse thereto."

27. Mr. ABUSHKEVICH (Byelorussian Soviet Socialist Republic) stressed the importance of international arbitration as a means of pacific settlement of disputes between States. The Charter made it an obligation on States to settle any dispute by peaceful means, including arbitration. That obligation was a corollary of the principle of peaceful coexistence and co-operation between States with different political and social systems. That was why the Byelorussian delegation was in favour of arbitration provided it was based on generally accepted principles. The first such principle was that there could be no arbitration without the consent of the parties to submit the dispute to arbitration, and it was derived in turn from the sovereignty and equality of States. Under article 15 of The Hague Convention of 1899 and in the words of article 37 of The Hague Convention of 1907, international arbitration had for its object the settlement of disputes between States by judges of their own choice and on the basis of respect for law. Under article 52 of the Convention of 1907 the subject matter of the dispute was determined by the parties. Thus, the principle of the autonomy of the will of the parties had entered into the practice of States, it was laid down in international agreements, and it was accepted in legal doctrine. States were sovereign and there was no central authority to give them orders.

28. With regard to the model rules put forward by the International Law Commission, he observed that, as the Commission itself admitted, they merely repeated the substance of the 1953 draft, which had not been approved by the General Assembly in 1955. As a result, the new draft contained the same serious defects pointed out by the General Assembly at its tenth session. Along with such sound provisions as the principle that the tribunal, once constituted, remaining unchanged, there were other provisions which departed from the traditional notion of arbitration by transforming it into a supra-national jurisdictional procedure. Article 1 was a case in point. A State might find itself compelled, against its will, to submit a dispute to the arbitral procedure—a palpable violation of the principle of the autonomy of the will of the parties.

29. Another essential principle of arbitration was violated by article 9, which gave the arbitral tribunal the right to be the judge of its own competence and to interpret the will of the parties. Articles 3, 4, 5, 6, 27, 33, 36, 37 and 38 gave the International Court of Justice, or its President, the right to intervene in a way that was inadmissible and contrary to the Statute of the Court. The model rules tended to make the arbitral tribunal a substitute for the International Court of Justice.

30. The fact was that the International Law Commission had decided to disregard completely the opinions expressed by the many States which had criticized the 1953 draft. The old draft was back again, disguised as "model rules". The International Law Commission was thus attempting to induce the General Assembly to approve principles it had rejected on first examination because they converted arbitration into a jurisdictional procedure. Nothing new was added by the proviso that the draft was only a model on which States could draw as they saw fit. The question to be decided was what the General Assembly could and should recommend. The majority had already rejected those provisions which were contrary to the accepted principles of international law, and the General Assembly could not approve the draft so long as it contained such provisions. Whatever the report might say on the matter, the model rules were really a straitjacket and thus incompatible with the principle of the sovereignty and equality of States. Accordingly, the result of the International Law Commission's stubborn refusal to abide by the views of the General Assembly was that its draft could not be adopted, even as a basis for discussion.

31. However, the time spent by the Sixth Committee on the question of arbitral procedure had not been wasted. Ever since the tenth session of the General Assembly there had been a clear majority in favour of recognizing that arbitration was based on the essential principle of the equal sovereignty of States. A reaffirmation of that principle could only strengthen international peace and security.

32. Mr. RAHMAN KHAN (Pakistan), after briefly reviewing the various stages of the work of the International Law Commission on arbitral procedure, said that, in spite of its essentially optional nature, the usefulness of the draft could not be denied, since it embodied a set of carefully considered rules which might usefully guide States in drawing up arbitral agreements. As the model rules were not compulsory, the delegation of Pakistan did not consider necessary any detailed scrutiny of every one of them, and it felt that the part of the Commission's report which related to arbitral procedure could be recommended by the Sixth Committee to the General Assembly for adoption by resolution.

33. Mr. USTOR (Hungary) said that he would limit his observations to chapter II of the report of the International Law Commission, without going into the question whether or not a conference of plenipotentiaries to conclude a convention on arbitral procedure should be called.

34. Arbitration had had a place in international law and practice for a long time. The Hungarian delegation would like to confirm its adherence to the principle of international arbitration and its intention to take part in any action by the United Nations and its organs calculated to encourage the widest possible use of that means of settling disputes peacefully.

35. When it was found that its first draft went beyond what the majority of Governments were prepared to

accept in advance, the International Law Commission, instead of recasting the text so as to make it more acceptable, preferred to keep the same general form and structure and put it forward as a set of model rules rather than a basis for a multilateral convention. Since the basic characteristics of the draft were the same, all the criticism levelled against it at the tenth session of the General Assembly remained valid.

36. In its report the International Law Commission pointed out that since the proposed rules were only binding when the States parties to a dispute agreed to resort to them, their adoption by the General Assembly would not require Member States to decide whether to sign and ratify an international convention on the matter. Incidentally, in dropping the idea of submitting a draft convention to the General Assembly on the question of arbitral procedure, though it had elected the topic for codification, the Commission seemed to have deviated from its original purpose. It might be asked whether the method of work adopted by the Commission in the case in point was in line with its aims as laid down in its statute.

37. The Commission claimed that the situation was quite different from that in 1955 when the General Assembly was called upon to recommend the first draft to Member States with a view to the conclusion of a general convention. Actually, the difference was extremely small. At that time, as at present, Member States would not have been bound by the Assembly's recommendation, and the provisions of the convention would not have been any more binding on States which did not want to be parties to it than the provisions of the model rules would be binding on States which did not agree to adopt them. Naturally, when a delegation spoke in favour of a resolution recommending the conclusion of a general convention, its vote implied a moral obligation, if nothing more, to sign the convention or to accede to it, but it should not be forgotten that a vote in favour of the adoption of model rules also implied a moral obligation. States whose representatives voted in favour of the adoption of those rules would be under the very strong moral obligation to accept them whenever they were proposed, at the risk of allowing the International Court of Justice to interfere in matters which were essentially within their domestic jurisdiction. That was a consideration which should be given careful thought by States which had not accepted the compulsory jurisdiction of the Court or which had accepted it with substantial reservations.

38. Although the International Law Commission stressed the fact that if the proposed model rules were adopted, the parties would have complete freedom to depart from it, there was the danger that any alteration suggested by one of the parties to a dispute might worsen the situation and raise doubts with regard to its intentions. It could be argued that the submission of a set of model rules was in fact an indirect means of imposing upon States principles and provisions which they would not be ready to accept voluntarily.

39. The International Law Commission stated that one of the chief objects of the draft was to enable parties to draw up their own arbitral convention with their eyes open. If they wished, they could deviate from the proposed model, but in so doing they ran the risk of frustration (see A/3859, para. 21). In his opinion, that was tantamount to saying that unless the parties strictly followed the proposed rules and conceded the predominant role of the International Court of Justice, the arbitral compromis might be a risky step in the dark. Such a suggestion would be the death blow to the traditional system of arbitration.

40. His delegation felt that the provisions contained in article 1, paragraph 1, were hardly compatible with those of Article 2, paragraph 7, of the Charter. He wondered whether in the case of States which had accepted the compulsory jurisdiction of the International Court of Justice with reservations, the reservations would automatically apply to the rule in article 1, paragraph 1. When dealing with the conclusion of a general convention on arbitral procedure, Member States could either abstain from signing the convention, or make reservations. That possibility no longer existed now that it was only a question of adopting model rules.

41. His delegation did not share the view that international law could only develop at the cost of sovereignty. The number of sovereign States was on the increase. At the present time when different economic and social systems existed in the world, the principle of sovereignty was a firm guarantee of the peaceful coexistence between States. Ensuring respect for that principle and the principle of non-interference, meant contributing to the preservation of peace. The progressive development of international law would be promoted by conventions and organizations in which the greatest number of States could participate and not by the imposition of rigid rules remote from the spirit of present-day international law.

42. He reserved the right to speak again in the debate, particularly if the draft were examined in detail.

The meeting rose at 6 p.m.

Litho. in U. N. 77601-November 1958-2,050