United Nations
GENERAL ASSEMBLY
SEVENTEENTH SESSION
Official Records

SIXTH COMMITTEE, 746th MEETING

Tuesday, 23 October 1962, at 10.50 a.m.

NEW YORK

CONTENTS

Chairman: Mr. Constantine EUSTATHIADES (Greece).

AGENDA ITEM 76

Report of the International Law Commission on the work of its fourteenth session (A/5209, A/C.6/L.498, A/C.6/L.500, A/C.6/L.501, A/C.6/L.502) (continued)

1. Mr. KERLEY (United States of America) said that since draft resolution A/C.6/L.500 had been introduced by the representative of Turkey and further explained by the representative of Japan, his delegation would limit its comments to draft resolution A/C.6/L.501.

2. While that draft resolution contained affirmative elements, difficulties arose in connexion with paragraph 3. His delegation did not question the competence of the General Assembly to make recommendations to the International Law Commission; it did doubt the wisdom of doing so at the present time, when the consideration of the topics in question was in a preliminary stage. Recommendations from the General Assembly would be given great weight by the Commission, even though those recommendations had been adopted on the basis of short study and few comments. Moreover, the Statute of the Commission contemplated that the views of States would be expressed in the context of comments on specific draft articles. At that preliminary stage the recommendations of the General Assembly would necessarily lack clarity and precision.

3. His delegation did not agree with the Indonesian representative in attributing indecision to the Commission in its work (744th meeting, para. 19). He pointed out that the innovations in the draft articles should assure even the most sceptical that the Commission would not hesitate to propose progressive solutions to the complex problems it was studying.

4. In order not to impede the Commission's efforts to find such solutions, the Sixth Committee should refrain from issuing broad, imprecise mandates to the Commission at the present stage of its work. If, however, the Committee thought it necessary to make broad recommendations, the United States delegation would recommend that the agenda be revised so that it would be possible to make a detailed examination of the essential bases of the law of treaties, and certain aspects of State responsibility.

5. His delegation also had grave objections to the content of the sub-paragraphs of paragraph 3. Sub-paragraph (a) stated that the law of treaties should be based "on strict respect for principles of the sovereign equality of States". A treaty was a limitation on the sovereignty of a State voluntarily assumed by that State. From a reading of that recommendation it might seem that the Sixth Committee was insisting rather on the rights of sovereign States, regardless of treaty provisions, than on their duty to fulfil obligations voluntarily undertaken. Furthermore, there were other principles of international law, not mentioned in sub-paragraph (a), on which the International Law Commission should base its work. The reference to sovereign equality might also be intended to raise, indirectly, the question of the participation in treaties of certain States which were not part of the organized world community. His delegation believed that the States themselves were competent to decide with which other States they wished to establish treaty obligations. It was also convinced that inserting the highly charged political question as to which political entities were States into the complex process of the negotiation of multilateral treaties might obstruct the realization of the purposes of the treaties, and indeed the very conclusion of treaties.

6. As far as paragraph 3 (b) was concerned, his delegation did not believe that the topic of State responsibility should be given so vast a scope nor charged with such political content as to make the subject unsuitable for codification by the Commission. Moreover, by making a recommendation on that matter, the Sixth Committee would prejudge the conclusions to be reached by the Sub-Committee on State Responsibility.

7. Paragraph 3 (c) did an injustice both to the International Law Commission and to the new States. It implied that the Commission, in violation of its Statute, might not take account of the views of some Member States unless especially cautioned to do so by the General Assembly; it also implied that the views of the new States were not significant enough to command the attention of the Commission without the express intervention of the General Assembly.

8. With all those considerations in mind, the United States delegation could not support draft resolution A/C.6/L.501 in its present form. The draft resolution which his delegation had co-sponsored (A/C.6/L.500), on the other hand, followed the pattern of resolutions previously adopted by the Sixth Committee concerning the reports of the International Law Commission, and he hoped that it would receive the support of the members of the Committee. He was prepared, however, to consider alternative texts which might be submitted.

9. Mr. MOVCHAN (Union of Soviet Socialist Republics) said that, in considering paragraph 3 of draft resolution A/C.6/L.501, two questions arose: first, was it legitimate to make recommendations to the International Law Commission? Second, was it desirable to do so? The first point was apparently established. The competence of the members of the Sixth Committee, who were themselves jurists or teachers of law and some of whom even sat on the International Law Commission, could not be questioned, especially as it was not a matter of giving instructions to the International Law Commission but simply of making recommendations; in addition, there were precedents, including General Assembly resolution 1686 (XVI) which had presented a number of recommendations on specific points to the Commission and which had inspired the draft resolution in question. As for the second question, it was obviously preferable that consideration of the report of the International Law Commission should be approved by a draft resolution on which the General Assembly would vote and which would enable the Assembly to form an opinion of the wide scope of the debates to which the report had given rise. It was also important to show the International Law Commission the great interest that its work had aroused in the Sixth Committee.

10. As for the draft resolution itself, he stressed that paragraph 3 (a) simply recommended to the International Law Commission that it should continue its codification work in the direction it had itself chosen; while that had already been said before, it did not seem superfluous to repeat it. The expression "taking into account the views expressed" was very useful. The International Law Commission had to hear all opinions, and then had the responsibility for separating the wheat from the chaff. The question of the equality and sovereignty of States was of primary importance, especially in the codification of the law of treaties, since a treaty was a voluntary agreement between equal subjects and without sovereign equality there could be neither treaties nor codification of the law of treaties.

11. Paragraph 3 (b) did not constitute interference in the Commission's work but rather advice given to it. That sub-paragraph also constituted confirmation of the opinion already expressed by the General Assembly that the topic of State responsibility must not be restricted to the protection of the rights of aliens, but should be given a wider scope.

12. Paragraph 3 (c) laid stress on the new States because the question of the succession of States and Governments had become particularly acute when new States were established and it consequently became necessary to settle the question of their succession. That did not mean that the opinion of the other States was in any way disparaged.

13. Mr. MISHRA (India) felt that draft resolution A/C.6/L.500 was too brief and laconic to express adequately the view of the Sixth Committee concerning the report of the International Law Commission. Draft resolution A/C.6/L.501 was much more complete and constructive. It had been contended that the draft resolution broke with tradition because it departed from the precedent established by other resolutions on the same subject. He did not think so, and recalled that General Assembly resolutions 177 (II), 178 (II) and 260 (III) had been drafted in clear and specific language and that those resolutions and many others were implicitly or explicitly recommendations to the International Law Commission.

14. A second objection made to draft resolution A/C.6/L.501 was that the Sixth Committee was not competent to adopt resolutions of that kind. If that was so, who was competent to do so? He associated himself with the arguments advanced by the Iraqi representative at the 745th meeting in answer to that assertion. The 110 sovereign States represented in the Sixth Committee had not only the right but the duty to make recommendations and even to give instructions to the International Law Commission.

15. It had also been contended that by adopting draft resolution A/C.6/L.501, the Sixth Committee would be showing disrespect to the International Law Commission and would interfere in its work. He failed to understand how conveying to the International Law Commission the opinion of the majority of the members of the Sixth Committee could constitute disrespect. All who had participated in the debates on the report of the International Law Commission had congratulated the Commission on the quality of its work and the results which it had achieved. That was also the sense of draft resolution A/C.6/L.501.

16. Lastly, certain persons had claimed that the Sixth Committee, which was composed of representatives of Governments whose opinions were influenced by politics, was not competent to make recommendations to the International Law Commission, whose members were all distinguished jurists without any particular political bias and knew better than anyone else what they had to do. It should not be forgotten, however, that the questions studied by them were not merely legal and that, as the Chairman of the International Law Commission had very aptly said in his statement at the 740th meeting of the Sixth Committee, it was impossible to divorce international law entirely from political considerations.

17. He had gathered that in response to the criticisms of certain representatives with respect to the length of the preamble, the sponsors of draft resolution A/C.6/L.501 had agreed to delete the fourth and fifth paragraphs. He hoped that that would make it easier for some representatives to accept the draft resolution. With respect to the operative part, paragraphs 1, 2 and 4 had received almost unanimous support. He wished to make clear that by approving paragraph 4, his delegation did not mean to criticize the Secretariat but merely to strengthen its position so that it could provide the necessary services. Paragraph 3 was the one which had caused most controversy. In a spirit of compromise, the sponsors of the draft resolution had informed his delegation that they could accept the following amendments to paragraph 3: in sub-paragraph (a), the words "codification work in the field" would be replaced by the words "work of codification and progressive development", and the phrase "and the recent developments in this field", after the words "submitted by Governments", would be deleted; in sub-paragraph (b), the word "broader" would be replaced by "broad", the words "rules of State responsibility" by the words "rules governing State responsibility" and the phrase "relating to the maintenance of international peace and security" by the phrase "set forth in Articles 1 and 2 of the Charter of the United Nations".

18. Those changes should satisfy a number of delegations. If any of them still had doubts concerning

the propriety of drafting recommendations in those terms, he would draw their attention to the statement made by the Chairman of the International Law Commission (734th meeting). Lastly, paragraph 3 (c) might be amended, as the representative of Ceylon had proposed (745th meeting, para. 43), by deleting the word "new" before the word "States" and by inserting the words "inter alia" after the words "to take into account". He hoped that with those changes, the sponsors of the two draft resolutions would be able to reach agreement on a joint text so that the Sixth Committee could adopt a draft resolution unanimously.

19. Mr. E. K. DADZIE (Ghana) thought that the views expressed during the debate would make it possible to combine the two draft resolutions before the Committee. It had been said that draft resolution A/C.6/L.501 was not in conformity with the resolutions previously adopted on that subject and that the Committee could not do better than follow past examples. He did not see why the Committee should restrict itself to a stereotyped attitude from one year to the next. On the contrary, it was its right and duty to submit to the General Assembly a draft resolution which presented a true reflection of its discussions. It had been asserted that the distinguished jurists who composed the International Law Commission had no need of instructions. Nobody questioned their great ability; the Committee, nevertheless, was entitled to inform them of its wishes, which might prove helpful in their work. The Commission was not so sacrosanct that the General Assembly itself could not issue recommendations to it. His delegation had not been impressed by such adjectives as "disrespectful" and "senseless" which had been applied to draft resolution A/C.6/L.501, or by the learned arguments adduced, which, moreover, revealed a lack of legal maturity which was hardly in the tradition of the Committee. The sponsors of draft resolution A/C.6/L.501 thanked those delegations which had made constructive suggestions. They hoped that the sponsors of draft resolution A/C.6/L.500 would also find them acceptable.

20. Mr. KIBRET (Ethiopia) noted that the supporters of draft resolution A/C.6/L.500 claimed that it had the merit of brevity, that at the present stage of its work the International Law Commission did not need any new instructions, that its work should not be interfered with, that its members were distinguished jurists whose views were not influenced by politics and that, for all those reasons, the text was preferable to that of draft resolution A/C.6/L.501, which was vague and redundant, while its operative paragraph 3 reflected a political attitude which prejudiced the results of the work already done by the Commission. The sponsors of draft resolution A/C.6/L.500 admitted that the Committee possessed the necessary legal competence to make recommendations to the Commission and that it had the right to do so by virtue of the General Assembly resolution (174 (II)) which had created that Commission, but they thought it unwise to exercise that right. But it was precisely in matters where differences of opinion prevented the development of harmonious relations that the Committee could act wisely by making recommendations. Everybody was aware that there were serious differences of opinion among the members of the Commission, particularly with respect to the question of State responsibility, as appeared from paragraphs 33 to 41 of the Commission's report (A/5209).

21. His delegation was in favour of draft resolution A/C.6/L.501, since its purpose was to convey to the Commission the views of the Committee on its future work, while at the same time congratulating it on the work which it had already done. On the other hand, draft resolution A/C.6/L.500 made no attempt whatsoever to guide the Commission in its work. Nevertheless his delegation was not prepared to accept draft resolution A/C.6/L.501 without reservations. The use of the plural in the expression "principles of the sovereign equality of States" in paragraph 3 (a) was not clear. The wording of sub-paragraph (b) in that same paragraph was too general. He wondered whether it referred to the views of new States concerning other new States or concerning States which had formerly exercised sovereign rights over their territory. The wording of sub-paragraph (c) was not sufficiently specific. His delegation hoped that the sponsors of the two draft resolutions would succeed in reaching agreement on a joint text acceptable to all.

22. Mr. ZOUHIR (Tunisia) said that he had given very careful consideration to the two draft resolutions before the Committee. His delegation approved the provisions contained in draft resolution A/C.6/L.500. The International Law Commission was undoubtedly making praiseworthy efforts to provide States with a body of law and codes which would facilitate increasingly broad co-operation. His delegation, however, would support draft resolution A/C.6/L.501, not in opposition to draft resolution A/C.6/L.500, but because it seemed more complete. The subject matter of the operative part of draft resolution A/C.6/L.500 was in fact covered by operative paragraphs 1 and 2 of draft resolution A/C.6/L.501. That text thus had the advantage of supplementing those simple statements with recommendations. It was quite logical for the General Assembly to make recommendations to one of its functional commissions, and the International Law Commission should be kept informed of the intentions and wishes of the General Assembly. Operative paragraph 3 (a) of draft resolution A/C.6/L.501 contained a recommendation of a general nature which would serve as a basis for the work of the International Law Commission. It was hardly desirable that the Commission should lay down as a hard and fast rule certain conclusions which might be subsequently questioned by some countries or rejected by others. The principle of the sovereign equality of States was recognized in the Charter and was confirmed by the very presence of all the States in the General Assembly. An effort should be made to get international law out of the rut of obsolete pragmatism and guide it in the direction of sincere co-operation between States. Confidence, however, could only be created by recognition of the sovereign equality of States. A reference to the principles of the Charter was not out of place in the draft resolution. With respect to paragraph 3 (b), everybody knew that there were several contradictory arguments on the subject of State responsibility. The recommendation contained in that sub-paragraph would enable the Commission to refrain from limiting its study to one particular aspect of the question. With respect to paragraph 3 (c), he pointed out that the liberation of the colonial countries was the greatest event in the twentieth century. It was impossible to ignore the changes which would be made in international law as a result of the appearance of the new countries on the international scene. The draft

resolution, therefore, should remind the Commission that the law should be adapted to the needs of the present time. With respect to operative paragraph 4, his delegation endorsed the observations of the representative of Iraq. Draft resolution A/C.6/L.501 did not restrict the action of the International Law Commission; on the contrary, it served to shed more light on its deliberations and provided it with materials for its work. His delegation felt that the changes proposed by India were reasonable and it would therefore vote for draft resolution A/C.6/L.501.

23. Mr. AÑEZ (Bolivia) said that the two draft resolutions before the Committee could be considered as one, since the operative part of draft resolution A/C.6/L.500 was covered in its entirety by paragraphs 1 and 2 of the operative part of draft resolution A/C.6/L.501. The difference between the two texts was that the second draft contained legitimate and timely recommendations to the International Law Commission, whereas the first contained no recommendations. In draft resolution A/C.6/L.501, emphasis was rightly laid, in the third preambular paragraph and in paragraph 3 (b), on two especially important points. In the first the need for codification and progressive development of international law with a view to making it a more effective means of implementing the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations was emphasized; in the second, the need for a broader approach to the codification of rules of State responsibility and for the Commission to include in its study the rules governing responsibility consequent upon the violation of the basic principles of international law relating to the maintenance of international peace and security.

24. It was time the United Nations was given the means to put into practice the principles proclaimed by the Charter. To that end, it must be able to count on an adequately developed code of international law and a corpus of positive rules for eliminating the causes of conflict and ensuring the maintenance of peace under conditions of equality and justice. It would be disastrous if the United Nations lost all authority and mankind had to wait for a third world peace before its dream of universal community of interests and harmony could be fulfilled. One way of achieving a constructive and lasting peace was to re-examine positions reached by force and not by law. Seemingly perfect treaties existed, but they were vitiated to the point of nullity by having been extorted by violence. Treaties of that kind could not be regarded as instruments of international law or valid means of regulating relations among States. As in domestic law, the free consent of both parties was the very essence of any agreement. Article 24 of the Covenant of the League of Nations had recognized the right to call for the revision of treaties which could not be applied or were a threat to peace. Article 14 of the Charter stipulated that the General Assembly might recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deemed likely to impair the general welfare or friendly relations among nations.

25. He recalled that during a war of conquest, Bolivia had been cut off from the Pacific and its dispossession of territory had later been sanctioned by a treaty imposed by force. Bolivia nurtured no feelings of revenge; it had full confidence in the sense of justice of international bodies, in the spirit of understanding of its neighbour country and in the natural interplay of economic and geographical laws.

26. He would vote for draft resolution A/C.6/L.501, which contained sensible recommendations for the attention of the International Law Commission.

27. Mr. SPERDUTI (Italy) hoped that the two draft resolutions could be merged into a single text. Otherwise the Italian delegation could not support draft resolution A/C.6/L.501, which it criticized on the same grounds as several other representatives.

28. Several speakers had wondered whether or not it was lawful to make a recommendation to the International Law Commission. The real question was whether that attitude towards the Commission was desirable.

29. He could not agree with the recommendations in paragraph 3 of draft resolution A/C.6/L.501. The wording of sub-paragraph (a) was very ambiguous. The words "foundations" and "based on" were tautological, and there was only one principle of the sovereign equality of States. Apart from the substance, that lack of precision was sufficient ground for opposition. As for sub-paragraph (b), the Commission had already instructed its competent Sub-Committee to study the general aspects of the responsibility of States, and there was no point in asking it again to adopt a broader approach.

30. The draft resolution recommended the Commission to include in its study the rules governing the responsibility consequent upon the violation of the basic principles of international law relating to the maintenance of international peace and security. It would be better to leave the Commission to decide which aspects of international responsibility it would study. For one thing, it should not be forgotten that in 1954 the Commission had completed a draft code of Offences against the Peace and Security of Mankind,[1] which had been submitted to the General Assembly but not then discussed. It had dealt with those offences as international crimes for which even Heads of State and members of Government were criminally responsible. What the Commission still had to study in due course was the other aspect of international responsibility consequent upon those offences: the responsibility of a State as such.

31. Lastly, sub-paragraph (c) discriminated between States in a manner which seemed hardly compatible with the principle of their sovereign equality. The amendment proposed by the representative of India to deal with that point was not sufficient. It was certainly superfluous, and perhaps vexatious, to recommend the Commission to take into account, among other things, the views of new States.

32. For all those reasons the Italian delegation could not vote for draft resolution A/C.6/L.501. If no changes were made in the proposals, his delegation would support draft resolution A/C.6/L.500.

33. Mr. BERNSTEIN (Chile) said that the Bolivian representative's allusion to the peace treaty between Bolivia and Chile was out of place. That treaty had been signed in 1904, fifty-eight years ago and twenty-five years after the end of an unjust and regrettable war between the two countries, and Chilean troops had not been occupying Bolivia at the time. It was

[1] See Official Records of the General Assembly, Ninth Session, Supplement No. 9, p. 9.

therefore the result of twenty-five years of negotiation and had been freely signed and ratified by Bolivia. Further, since 1904 numerous other treaties deriving from the 1904 peace treaty had in turn been freely signed and ratified by Bolivia.

34. Mr. ALCIVAR (Ecuador) suggested that a working group be set up, under the chairmanship of the Chairman of the Sixth Committee, to try and prepare a joint draft resolution.

35. The CHAIRMAN said that the next meeting of the Committee could not be held until 26 October and that meanwhile the sponsors of the two texts would have a chance to continue their talks.

36. Mr. KERLEY (United States of America), speaking on behalf of the sponsors of draft resolution A/C.6/L.500, said that they intended to continue their conversations with a view to drafting a single resolution and that they would like the Chairman of the Committee to be present at their future talks.

37. Mr. E. K. DADZIE (Ghana) said that the sponsors of draft resolution A/C.6/L.501 were anxious to reach agreement with the delegations of the United States of America, Japan and Turkey in working out a single text, but he thought that the presence of the Chairman was not indispensable unless the parties concerned had special difficulties to overcome.

38. Mr. NEDBAILO (Ukrainian Soviet Socialist Republic) assured the Committee that the sponsors of draft resolution A/C.6/L.501 would take into account all the views expressed both during the general discussion and during discussion of the drafts.

39. Mr. KERLEY (United States of America) said that the sponsors of draft resolution A/C.6/L.500 would welcome the presence of any member of the Sixth Committee who wanted to take part in the informal talks.

40. Mr. E. K. DADZIE (Ghana) said that the authors of draft resolution A/C.6/L.501 issued a similar invitation to all representatives, on behalf of the sponsor of draft resolution A/C.6/L.501.

Tribute to the memory of Mr. Sukardjo Wirjopranoto, Permanent Representative of Indonesia to the United Nations

41. The CHAIRMAN, speaking on behalf of the Committee, extended sincere condolences to the Indonesian delegation on the occasion of the death of Mr. Wirjopranoto, Permanent Representative of Indonesia to the United Nations.

42. Mr. MISHRA (India), Mr. E. K. DADZIE (Ghana), Mr. KIBRET (Ethiopia), Mr. ZOUHIR (Tunisia), Mr. AÑEZ (Bolivia) and Mr. SPERDUTI (Italy) paid tribute to the memory of Mr. Wirjopranoto.

43. Mr. THAJEB (Indonesia), on behalf of his delegation, thanked the members of the Committee for their expressions of sympathy.

The meeting rose at 1.15 p.m.

Litho in U.N. 77601—May 1963—2,075