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CONTENTS

Chairman: Mr. Constantine EUSTATHIADES (Greece).

AGENDA ITEM 76

Report of the International Law Commission on the work of its fourteenth session (A/5209) (continued)

1. Sir Kenneth BAILEY (Australia) said that the report of the International Law Commission (A/5209), which was before the Committee, contained material for study and reflection but did not require discussion at the present session. It was apparent from the programme outlined in paragraph 60 of the report that the Commission would have enough work to occupy it for a long time to come. The task of the Sixth Committee was simply to find some means of hastening completion of the Commission's extensive programme, since none of the topics included in that programme was ready for discussion of its substance. Although chapter II of the Commission's report, containing twenty-nine draft articles on the law of treaties, was nearly complete, the Governments to which the articles had been transmitted had not been able to submit their comments in time for the present session. However, even a glance at the Commission's text showed how much scholarly discussion, pioneering work and adjustment of differing views must have gone into the drafting of the articles; the section dealing with reservations and the articles on accession to multilateral treaties would require very close study by the Ministries of Foreign Affairs of all Member States. When the whole draft convention on the law of treaties was submitted to the Committee, it would mark a significant advance in carrying out the task assigned to the General Assembly under Article 13 of the Charter: to encourage the progressive development of international law and its codification. The Committee could not, as the Commission was now doing, undertake the prolonged and continuing studies required in order to draft a convention; however, it might later be called upon to present the definitive views of Governments on the Commission's draft, since reference of the matter to a conference of plenipotentiaries might not be the appropriate procedure in the present case.

2. The Committee was awaiting with great interest the results of the Commission's work on State responsibility, succession of States and Governments, and relations between States and inter-governmental organizations.

3. The section of the report dealing with the scope and content of the rules of State responsibility (A/5209, paras. 33-48) was of great importance. His delegation hoped that the decision to refer the topic to a Sub-Committee and await its recommendations before appointing a special rapporteur would expedite completion of the Commission's work. Since there was no instrument or rule to be interpreted, it was for the Commission to determine the scope of the topic. The content of State responsibility—as referred, for example, for codification to the Hague Conference of 1930—had traditionally been confined to the law relating to the treatment of aliens. A broader view had been taken by the eminent jurist Oppenheim, who had considered State responsibility to be the legal responsibility of a State for the performance of its legal duties, meaning its liability to make reparation for any international delinquency—any breach of its international obligations—that it might commit. So defined, the topic had a very broad scope, for it could embrace the whole of substantive law defining international delinquencies, a very large portion of international law. In determining the scope of its work on State responsibility, the Commission should be guided not by formal considerations but by its purpose, which was codification. The criteria for determining whether a topic was suitable for codification were well known; some aspects of State responsibility might be ready for codification at the present time, while others might not. Moreover, the Commission was not obliged to confine its attention to lex lata; indeed, it had already dealt with lex ferenda. His delegation hoped, however, that it would decide not to take up aspects of the subject which, because of their controversial nature, would unduly delay the completion of its work; also that it would not adopt, for example, the suggestion made in the Committee that the Commission should formulate legal rules governing the fulfilment by States administering Non-Self-Governing Territories of the political responsibilities dealt with in Chapters XI and XII of the Charter.

4. His delegation felt that the physical arrangements for the Commission's future work, dealt with in chapter V of the report, essentially involved budgetary questions affecting the Fifth Committee and problems which the Commission must solve itself. It would, however, be proper for the Sixth Committee to point out that the Commission should be enabled to press on with its programme to the limit of the available budgetary provision, and for that purpose to plan its work with the utmost freedom, particularly with regard to its time of meeting.

5. Mr. RIPHAGEN (Netherlands) congratulated the International Law Commission on all that it had accomplished during its fourteenth session, the results

of which amply demonstrated that the increase in its membership had not impaired the high quality and efficiency of its work. Since the comments of Governments on the draft articles on the law of treaties (A/5209, chap. II) were to be presented later, he would confine himself to some general remarks on whether the final draft should take the form of a code or of a multilateral convention. The Commission had stated (A/5209, para. 17) that a multilateral convention "would give all the new States the opportunity to participate directly in the formulation of the law". However, as the representative of Chile had pointed out at the 737th meeting, all Member States could take part in formulating certain rules by participating in the debate of the General Assembly. Moreover, the group of articles in the present draft relating to the conclusion of treaties contained at least some provisions in the nature of rules of procedure rather than definitions of the rights and obligations of States. When two or more States signed a treaty, there was nothing to prevent them from agreeing on any procedure they thought fit for its drafting, adoption and entry into force. It would of course be useful to have a general code setting out normal procedures to which contracting States could refer if they had not agreed on anything else; however, the adoption of model rules by the General Assembly seemed a quicker way of achieving the same object. Of course, as the representative of Chile had also pointed out, those arguments applied only to rules of procedure.

6. With regard to the Commission's programme of future work, he felt that, whatever preferences the members of the Committee might have as jurists or statesmen concerning the claims of various legal topics to early study or clarification, the Commission's choice of topics and its decision on the order in which they should be treated were satisfactory considering the limited time available.

7. Mr. HSU (China) congratulated the International Law Commission on accomplishing, in spite of the increase in its membership, a great deal of work during its fourteenth session without lowering its standards. His delegation hoped that the General Assembly would amend the rule requiring the Commission to meet at the end of April, since that date was very inconvenient for some of its members who taught at universities and who, since they generally served as special rapporteurs, were indispensable to the Commission's work.

8. Mr. NJO-LEA (Cameroon) addressed a word of welcome to the five States which had recently joined the United Nations. They all belonged to the group which had come to be called the uncommitted countries and owed their existence to the historical trend which, in less than twenty years, had enabled the United Nations to double its membership. Their participation would broaden the scope of the Committee's work and help to hasten the emergence of an international legal order accepted by all men regardless of their philosophical and ideological systems.

9. His Government would in due course submit its comments on the draft articles on the law of treaties contained in the Commission's report (A/5209). For the present he would confine himself to some general observations. His delegation shared the view that it was inadvisable to add additional topics to the Commission's already impressive programme of work. It was pleased to note that the Commission had given priority to the topic of State responsibility. That topic covered such an important segment of international law that its study should begin with the enumeration of a number of general principles which would enable the Commission to cope with the extreme complexity imparted to it by the scientific and technological advances of the atomic age. It was quite proper to point out that State responsibility had been limited in the past to damages caused to aliens, so that the theory of responsibility for fault had gained acceptance. However, it would be correct to say today that, in the age of interplanetary flight, the concept of responsibility without fault had entered international law with an unobtrusiveness that should not be permitted to conceal its importance. For example, when a missile returned to earth after passing through regions of space whose biological composition could not be determined in the present state of scientific knowledge, it violated no treaties and posed no threat to peace, but it might carry particles which could contaminate the air space of the States over which it flew.

10. His delegation did not share the view of some members of the Committee that the succession of States and Governments ought to be divided into two topics for ease of study.

11. With regard to the form in which the law of treaties should be stated, his delegation felt that a code, though it enabled legal thought to sum up the entire topic in abstract principles and rules meant to be gradually supplemented or clarified, was not an effective method. Since codification was intended to promote international peace and security, it must fit the facts. His delegation therefore supported the Commission's decision. It endorsed the use of the term "treaty" in the draft articles to denote a written agreement, but had certain misgivings about the decision to confine study of the law of treaties to written agreements. It did not seem advisable to disregard agreements in simplified form which, though summaries of written treaties, were nevertheless treaties in the full sense of the term, since a treaty was after all essentially a meeting of minds.

12. His delegation agreed with those members of the Committee who at previous meetings had stressed the importance of draft articles 8 and 9, relating to participation in treaties. There should be no restrictions on the right to become a party to an existing treaty, for the international community was moving towards universality and it would be regrettable if treaties, the motive force of that trend, became its brakes. Moreover, no State could consider itself entitled on any ground to check the trend towards enlargement of the international community, particularly through multilateral treaties affecting the interests of all.

13. Mr. KHIN CHHE (Cambodia) considered the draft articles on the law of treaties (A/5209, chap. II) a remarkable feat in the codification and development of international law. He hoped that Governments would have enough time to present their comments, since the question was complex and worthy of thorough study. He noted with satisfaction the high quality of the enlarged Commission's work. Geographical representation on the Commission would in future be more equitable, and the new representatives of African and Asian countries would certainly contribute much to the evolution of international law.

14. The Commission had decided (A/5209, paras. 60 and 61) to restrict its programme of future work to seven subjects, three of which were so broad that they might well occupy it for several sessions. Consequently several subjects proposed by Governments had had to be dropped. His delegation did not believe it would be advisable to make any changes in the list of topics drawn up by the Commission.

15. Among the topics in the Commission's future work programme, he was particularly interested in that of State responsibility. Its complexity was fully apparent when an agreement had to be reached on which of its aspects should be studied. Hitherto the theory of State responsibility had been based on case-law concerning personal injury or damage to the property of aliens in violation of their rights. The study of that aspect of the matter would undoubtedly raise objections from certain States which had just regained their independence and whose actions might infringe the rights, or alleged rights, of citizens of the former colonial Powers. Those States might consider such rights unlawful and not entitled to legal protection. That view of State responsibility seemed to some observers too restricted. In their opinion international law should deal with new aspects of international life and develop with the times. Contemporary society was marked by the appearance of new rules designed to strengthen world peace, such as the principles of non-aggression, prohibition of the use or threat of force, and peaceful coexistence. The last-named had been formally proclaimed by the Bandung Conference of African and Asian Nations.[1] Violation of those principles should involve State responsibility, and so its study should certainly not neglect that second aspect.

16. U SAN MAUNG (Burma) said that the codification and progressive development of international law undertaken by the International Law Commission could be compared with the work accomplished by the United Kingdom in establishing a body of rules for the Indian Empire, which at that time had included Burma. It was that body of rules which had enabled the former Empire countries to keep order after attaining their independence. If international law was to play its rightful part, it was essential that the evolution of the social and political situation in the new countries should be taken into account. In that respect, the Sixth Committee played a primary role, for it was the essential link between the General Assembly, which was chiefly a political organ, and the International Law Commission, essentially a legal organ. The Committee could guide the Commission by informing it of the trends observable among the Member States concerned.

17. His Government might have occasion to comment on the draft articles on the law of treaties (A/5209, chap. II). The Commission's future work on the codification and progressive development of international law and on State responsibility should not be confined to a study of the violation of aliens' rights but should be approached on a broader front. The Commission was to be congratulated on the work it had done, and it was gratifying to find that the Sixth Committee, after an eclipse, was now regaining its full importance.

18. Miss LAURENS (Indonesia) congratulated the new Member States, particularly the Democratic and Popular Republic of Algeria, on their admission. As to the report of the International Law Commission (A/5209), she was happy to note that, after many difficulties due to changes of special rapporteur, the Commission had resumed the study of the law of treaties, dividing its work into three parts: part I the conclusion, entry into force and registration of treaties; part II, their validity and duration; and part III, their application and effects. Her delegation hoped that, when the Commission came to deal with parts II and III, it would pay due attention to the question of the interpretation of treaties and to that of their termination.

19. With regard to the form which the provisions on the law of treaties should take, her delegation felt that a multilateral convention would carry far more authority than a code and would give the new States the opportunity to take an active part in the formulation of the law, thus placing the law of treaties on a wider and more secure foundation. As to whether the three parts should be amalgamated to form a single draft convention or should form three separate but related conventions, it seemed to her that that question could be left over for decision until the Commission's work was completed.

20. She wished to comment very briefly on a few of the draft articles (A/5209, chap. II), especially those on which divergent views had been expressed; the Indonesian Government would comment in extenso on the draft articles in due course. Article 8 was accompanied by a pertinent commentary stating that the Commission had been unanimous in thinking that general multilateral treaties, because of their special character, should be open to participation on as wide a basis as possible. But article 8, as formulated, included the possibility of limiting participation. Participation should be open to all States without exception and, in her delegation's view, the limiting clauses in article 8 should be deleted. As to the problem of the accession of new States to general multilateral treaties, which was raised in paragraph (10) of the commentary on articles 8 and 9, her delegation agreed that it should be possible to solve that problem by obtaining the consent of the States concerned, without having to negotiate a fresh treaty amending or supplementing the earlier one. Pending the establishment of a suitable procedure it might be useful if a list could be drawn up, if necessary by the United Nations Secretariat, showing multilateral treaties universal in character but not open to all States.

21. On the subject of reservations she was glad the Commission had recommended a flexible system; that appeared to be the soundest principle, especially for treaties open to more than a hundred States, and the same principle should be adopted for treaties concluded among "a small group of States".

22. However, article 18, paragraph 1 (d) according to which

> "A State may, when signing, ratifying, acceding to, accepting or approving a treaty, formulate a reservation unless... In the case where the treaty is silent concerning the making of reservations, the reservation is incompatible with the object and purpose of the treaty"

appeared to conflict with article 20, paragraph 2 (b), which stated that

[1] Held 18-24 April 1955.

"An objection to a reservation by a State which considers it to be incompatible with the object and purpose of the treaty precludes the entry into force of the treaty as between the objecting and the reserving State, unless a contrary intention shall have been expressed by the objecting State."

The latter provision seemed to imply that a State might make a reservation that was incompatible with the object and purpose of the treaty, and that it would be for the other States Parties to the treaty to settle the question of incompatibility by deciding whether or not to let the treaty enter into force between themselves and the reserving State. The result would be that certain States might not consider that reservation incompatible with the object and purpose of the treaty and might authorize its entry into force. She wondered whether it should be inferred that article 18, paragraph 1 (d) stated the guiding principles, while article 20, paragraph 2 (b), dealt with practical implementation. That question would require careful study in due course.

23. As to chapter III of the report, her delegation welcomed the Commission's decision (A/5209, para. 32) to continue giving priority at future sessions to its study of the law of treaties, and hoped that the Commission would thus be able to finish its work by the target date of 1966. It also noted with satisfaction that the Commission had decided to set up a Sub-Committee to prepare a preliminary report on the question of State responsibility (A/5209, para. 47), and that research on that extremely complex problem would no longer be confined to one single aspect, as in the past. The Commission would undoubtedly pay due regard to the new principles and practices followed by States in their international relations. Her delegation also welcomed the establishment of a Sub-Committee on the Succession of States and Governments (A/5209, para. 54), and the appointment of Mr. El-Erian as Special Rapporteur on relations between States and inter-governmental organizations (A/5209, para. 75). Special missions constituted, in her view, one of the three most important forms of bilateral peaceful relations and co-operation between States, the other two being diplomatic relations and consular relations. It was to be hoped that the Commission would be able to formulate a set of draft articles on special missions as it had on the other two subjects.

24. In conclusion she expressed the hope that the difficulties experienced by the Commission at its fourteenth session with regard to the production of documents, summary records and draft texts (A/5209, paras. 84-85) would be overcome, and that at its fifteenth session, the Commission would have proper services at its disposal.

25. Mr. WYZNER (Poland) said that his delegation attached great importance to the work of the International Law Commission, which had been the subject of several items on the Sixth Committee's agenda for several years past. The Commission had become more representative of the various components of the world's legal systems since it had been joined by the representatives of new countries in Asia and Africa, who took an active part in its work. It was regrettable, however, that the legal systems of the socialist countries were not represented in proportion to their importance in the world of today.

26. As to the Commission's report, he noticed that the Commission had been unable to submit a final draft to the General Assembly at its current session, but he regarded the draft articles on the law of treaties (A/5209, chap. II) as an important step forward in the progressive development of international law. The laborious process of codifying the law of treaties reflected the complexity of the problem. Indeed, the theorists of contemporary international law were practically unanimous in holding that treaties constituted the main source of international obligations; the same idea recurred both in the Statute of the International Court of Justice and in the Preamble to the Charter of the United Nations. It was therefore highly desirable that the Commission should take account in its work of the basic problems of the day. Prominent among those problems was the safeguarding of newly independent States from the imposition of unjust treaties. Attention should also be paid to the question of the free will of the parties, the question of sovereign equality between them, and the problem of non-discrimination against any State, whether or not a Member of the United Nations, regarding participation in multilateral agreements or conventions. On the last point his delegation noted with satisfaction that the Commission had taken a firm stand in article 8, paragraph 1, of the draft articles, which provided that "In the case of a general multilateral treaty, every State may become a party to the treaty". The restrictions which existed in practice, or which were advocated by some members of the Committee, were inconsistent with the spirit and with the other provisions of the draft articles, inter alia, article 1, paragraph 1 (c), and the accompanying commentary. The same applied mutatis mutandis, to article 8, paragraph 2, and article 9, paragraph 1. It was the considered view of his delegation that if the multilateral international treaty was to be the most fundamental juridical form of co-operation between States, it must be open for participation by as many States as possible. Any limitation of its scope was a disservice to the cause of peace and friendly relations among countries.

27. In the matter of reservations, the Polish delegation considered that the Commission had adopted in principle the right approach. His delegation could comment further on certain articles, such as article 9, paragraph 2, which used the very vague expression "a small group of States", but its observations would be included in a statement that the Polish Government would submit in due course.

28. With regard to State responsibility, rules should be laid down to govern that responsibility in such matters as aggression, war propaganda and violation of the right of peoples to self-determination, whereas the tendency so far had been to limit consideration to the protection of aliens' rights. The International Law Commission, in deciding that its work should be devoted primarily to the general aspects of State responsibility, now seemed to have accepted the new view of State responsibility, and his delegation consequently welcomed the establishment of the Sub-Committee on State Responsibility (A/5209, para. 47).

29. The establishment of the Sub-Committee on the Succession of States and Governments (A/5209, para. 54) was also a welcome development, and he endorsed the Commission's prudent decisions on its future programme of work.

30. Mr. IQBAL (Pakistan) said that he had studied with interest the report of the International Law Commission covering the work of its fourteenth session (A/5209). He noted that the draft articles on the conclusion, entry into force and registration of treaties (A/5209, chap. II) were only the first in a series of three drafts, of which the second and third would deal respectively with the validity and duration of treaties, and with their application and effects. He agreed with the Commission that the question whether all the drafts should be amalgamated to form a single draft convention or whether the codification of the law of treaties should be dealt with in a series of related conventions, as had been done in the case of the law of the sea, could be left over for decision when all the drafts were completed (A/5209, para. 18). It was evident that several years must elapse before the draft articles came before the Committee for consideration. His Government would submit in due course its observations on the draft articles concerning the conclusion, entry into force and registration of treaties. For the time being he would merely note that the draft articles were a fine achievement, even though some of them might raise controversial issues.

31. As to the Commission's future programme of work, it was gratifying that in accordance with General Assembly resolution 1686 (XVI), priority had been given to the three main topics—the law of treaties, State responsibility and succession of States and Governments—and that two Sub-Committees had been established to undertake preparatory work on the latter two topics. Furthermore, he supported the Commission's decision to add nothing further, for the time being, to the already long list of topics on its agenda (A/5209, para. 61); its appointment of Mr. El-Erian as Special Rapporteur on relations between States and inter-governmental organizations (A/5209, para. 75); and its decision to be represented by observers at the next sessions of the Asian-African Legal Consultative Committee and of the Inter-American Council of Jurists (A/5209, para. 81). He hoped that it would be possible to remedy the inadequacy of facilities mentioned in paragraph 84 of the report, which hampered the Commission in its work.

32. In conclusion, he paid a tribute to the Commission for its efforts to work out, for all nations, a code of conduct founded on the rule of law.

33. Mr. AÑEZ (Bolivia) said that he wished merely to point out a few omissions or obscurities in the draft articles drawn up by the Commission concerning the conclusion, entry into force and registration of treaties (A/5209, chap. II). First of all, however, the Commission was to be congratulated on having proposed, in article 1, para. 1 (a) a single word to designate any international agreement in written form; the entire text had gained much in clairty thereby. The omissions and obscurities related in the first place to article 25, on the registration and publication of treaties. In paragraph 2 of that article the Commission had been careful to avoid applying to States not Members of the United Nations the sanction provided for in Article 102 of the Charter; and rightly so, for an organization's administrative procedures could not be imposed on States which were not members of that organization. For the same reason, the registration of a treaty with the United Nations Secretariat should be optional for such States, and not an obligation as it had been hitherto. However, a treaty might be concluded between a State Member of the United Nations and a non-member State; yet that situation was provided for neither in article 25 nor in any other draft article. Secondly, article 27 provided that, where an error was discovered in the text of a treaty, the depositary should bring the error to the attention of all the States concerned; but no provision was made for the case of an error which went unnoticed by the depositary and was pointed out by one or more of the States which had participated in the adoption of the treaty.

34. Mr. PAL (Chairman of the International Law Commission) thanked the representatives on the Committee for the kind remarks they had addressed to the Commission and to himself. The Commission was ever mindful of the fact that international law was the work not so much of legal experts and professors as of eminent statesmen, who knew exactly where the areas of greatest tension lay and were therefore competent to assess the efforts at adjustment required. In their comments on the Commission's report, the members of the Committee had duly drawn attention to the controversial topics. As he saw it, those were the very matters which sould be brought under regulation if law was to be retained or established as the governing principle of international relations and if the rule of law was to supersede the rule of force. If law was to operate effectively in international relations, it would have to rely not only on the sense of moral obligation of States but also on the existence of order in international relationships. In commenting on the draft articles on the law of treaties (A/5209, chap. II), Governments should carefully weigh the obligation they were assuming to obey what was formulated as law, as well as the further, perhaps higher, obligation to bear in mind the inevitable practical consequences of their attitude for the millions of human beings under their care. They should therefore be careful to ensure that the proposed norm did not drift far away from the reality of world politics. To that end they must remember that the conditions surrounding international legal order had undergone fundamental changes and were still being transformed at a rate so rapid as to demand immediate adjustments. Indeed, new factors had appeared which had not been assimilated into any legal thinking.

35. It was of course out of the question to demand the return of past conditions so that the world might function once again according to the schedule of the jurists. Law must not be a rigid imposition, but must be adjusted to the requirements of progress. It must take into account the momentous political, economic and social developments affecting international life. International politics had taken on vital importance. The social centre of gravity now lay almost entirely with political institutions. The juristic imagination must therefore be adapted to the realities of a world in which political organization had superimposed itself upon economic processes. It was evident that such a problem could not be solved by jurists alone; the contributions of statesmen, and of representatives on the Sixth Committee in particular, were indispensable. The International Law Commission would certainly pay attention to the suggestions made by representatives on the draft articles and on the matters dealt with in chapter III of its report.

36. The existing written rules and what was termed "generally established practice" possessed no absolute value. They were the outcome of circumstances

and must change as circumstances changed, allowing for the inevitable time-lag. Sometimes the so-called "generally accepted" norms might merely reflect a situation of relative power or weakness that no longer existed, and to perpetuate them would be to deny the existence of a new balance. Generally speaking, any legal rule tended to lose its pertinence in time and, instead of producing order and harmony in relations, might become a source of friction.

37. In the international field, the evolution of the law presented special difficulties, for there was as yet no machinery of continuous adjustment, such as existed in domestic systems, so that the discrepancy between law and reality might become quite intolerable. Unless the adjusting machinery was brought into operation in good time, the only alternative to adjustment through revision would seem to be outright defiance of the law. In view of the current international situation and, in particular, the efforts that were being made to establish constitutional order in the international community, it would have been wise to endow that community with a permanent legislative unit which would be constantly on the alert. When the fate of mankind was at stake, no caution and no discernment could be too great.

38. The CHAIRMAN thanked the Chairman of the International Law Commission for his noteworthy statement. The Committee would be duly guided in its work by the ideas Mr. Pal had expressed.

The meeting rose at 5.15 p.m.

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