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## CONTENTS

	Page
<i>Agenda item 73:</i>	
<i>Question of the publication of a United Nations juridical yearbook . . . . .</i>	79
<i>Agenda item 76:</i>	
<i>Report of the International Law Commission on the work of its fourteenth session (continued)</i>	81

*Chairman:* Mr. Constantine EUSTATHIADES  
(Greece).

## AGENDA ITEM 73

Question of the publication of a United Nations juridical yearbook (A/5169 and Add.1 and Corr.1, A/5190, A/C.6/L.499)

1. Mr. COOMARASWAMY (Ceylon) said his delegation had a special interest in the item because the question of the publication of a United Nations juridical yearbook had been revived in the Committee at the thirteenth session by his predecessor, who had submitted a memorandum on the subject, contained in a working paper prepared by an informal working group.<sup>1/</sup> The Ceylonese delegation was aware of certain shortcomings in the original proposals, and therefore welcomed the written comments of certain Governments (A/5169 and Add.1 and Corr.1). The purpose of his intervention at that stage was to place before the Committee a summary of the facts, so as to enable it to consider the question in all its aspects. The ultimate aim of the publication was to form and strengthen an international community based on the rule of law, and an essential feature of such a community was that it should be aware of international obligations and the need for international co-operation transcending national interests. That awareness could be greatly promoted by the publication of a juridical yearbook, which would place a knowledge of the rules of international law within the reach of everyone.

2. The main purposes of the United Nations in that respect were set forth in the third paragraph of the preamble to the Charter, in Article 13, paragraph 1 a of the Charter and in Article 38 of the Statute of the International Court of Justice. It was obviously essential for the progressive development of international law and its codification and in order to facilitate the application of the various sources of international law by the Court that a collection of those sources which emanated from the United Nations or which dealt with matters of special interest to the Organization should be readily available. Moreover, the International Law Commission had stressed the urgent need for such a

publication because of the great difficulty long encountered by those interested in their efforts to keep abreast of current developments.

3. In order to give effect to Article 13, paragraph 1 a of the Charter, the General Assembly had adopted resolutions 94 (I) and 176 (II), which stated *inter alia* that greater knowledge of the aims, purposes and structure of the United Nations constituted a positive method of assisting the development of international law. In 1950, the International Law Commission had recommended that the Secretary-General should issue various legal publications, including a juridical yearbook,<sup>2/</sup> and the General Assembly, at its seventh session had, on the recommendation of the Sixth Committee, adopted a resolution (686 (VII)) requesting the Secretary-General to report on the extent to which developments in international law justified such a publication. The Secretary-General had submitted the report<sup>3/</sup> to the tenth session, but consideration of the document had been deferred, and the matter had remained in abeyance until the thirteenth session when, at the instigation of the Ceylonese delegation, a working paper had been prepared for use as a basis for discussion in the Sixth Committee. It had been suggested that the yearbook should consist of: part I, dealing with studies on problems of international law; part II, dealing with legal activities of the United Nations, consisting of documents and information concerning the status of the United Nations and the specialized agencies, decisions, recommendations or reports of United Nations bodies of legal interest, legal opinions of the United Nations Secretariat and a list of treaties concerning the United Nations and the specialized agencies; part III, relating to decisions of international and national tribunals on questions of international law; and part IV, comprising a bibliography on the general theory of international law and on the law of international organizations. It had been suggested that the yearbook should be published annually, either as a separate work, or as a third volume of the Yearbook of the International Law Commission.

4. By its resolution 1291 (XIII), the General Assembly had requested the Secretary-General to prepare a report on the question, and the report<sup>4/</sup> had duly been submitted to the Assembly at its fourteenth session, commenting on the plan for the publication proposed in the working paper and taking various observations on it into account. With regard to part I, there had been a sharp division of opinion on the desirability of incorporating private notions and articles from private sources. The opponents of the idea had argued that that would cause the yearbook to degenerate into a

<sup>2/</sup> See Official Records of the General Assembly, Fifth Session, Supplement No. 12, para. 91.

<sup>3/</sup> Ibid., Tenth Session, Annexes, agenda item 50, document A/C.6/L.348.

<sup>4/</sup> Ibid., Fourteenth Session, Annexes, agenda item 57, document A/4151.

<sup>1/</sup> Official Records of the General Assembly, Thirteenth Session, Annexes, agenda item 56, document A/C.6/L.428.

forum for the expression of political views and considered that it would be practically impossible to find an impartial editorial board and to establish criteria for the selection of the board and of the material to be included. Those in favour of the idea had maintained that no yearbook would be complete if it did not contain the academic research and conclusions of the leading jurists of the world, who would not normally be expected to submit partisan contributions, and that a good editorial board could eliminate abuse. The Secretary-General had concluded that the disadvantages and dangers tended to outweigh the possible gains, and some representatives in the Sixth Committee had expressed their concern.

5. Part II presented a different problem, that of the need to avoid duplication with other United Nations publications. The Yearbook of Human Rights, the Yearbook of the International Court of Justice, the Yearbook of the United Nations covering activities of United Nations organs, the Yearbook of the International Law Commission and the Repertory of Practice of United Nations Organs together covered a wide area of United Nations activities in legal matters. Accordingly, the juridical yearbook should contain only material not covered by existing publications, and the Secretary-General had recommended that it should consist of selected legal opinions of the Secretariat, selected documents concerning administrative law, mainly comprising judgements of the United Nations Administrative Tribunal, documents and information concerning the status of the United Nations and the specialized agencies, United Nations decisions, recommendations and reports of legal interest and a list of treaties. The same difficulties of duplication seemed to arise in connexion with part III, and the Secretary-General had suggested that, to avoid a formidable task of selection, publications in that category should be limited to those having a direct bearing on the United Nations, those to which the United Nations was a party, or decisions involving interpretations of, or opinions on, United Nations conventions. Finally, part IV was also considered to involve a formidable task, and it was added that separate bibliographies were already published by the United Nations.

6. After discussing that report, the General Assembly had adopted resolution 1451 (XIV) deciding that a yearbook including documentary materials of a legal character relating to the United Nations should be published and requesting the Secretary-General to submit a report containing a detailed outline of such a yearbook to the fifteenth session. By its resolution 1506 (XV), the Assembly had taken into account the fact that further study of the form and contents of the yearbook and of its financial implications was required, and had decided to place the question on the provisional agenda of its seventeenth session, inviting Member States to submit written comments on the question. Those comments had been received and had been analysed by the Secretariat in document A/C.6/L.499.

7. Finally, his delegation was aware of the financial implications of the project and wished to recall the concern expressed in that regard at the fourteenth session, especially by the USSR representative, who had regarded the estimate of \$42,000 as excessive.<sup>5/</sup> Those financial considerations were, of course, even more important in the existing context of United Nations affairs. As the prime mover in the matter, however,

his delegation had felt obliged to summarize the history of the item, on which it would keep an open mind.

8. Mr. VEROSTA (Austria) asked the Secretariat what funds were available for the project in question.

9. Mr. STAVROPOULOS (Legal Counsel) said that no funds had yet been budgeted for the yearbook. The Committee must first define the form and contents of the publication, and the budgetary authorities would then decide whether it could be published.

10. Mr. E. K. DADZIE (Ghana) thanked the Ceylonese representative for his lucid summary of the long history of the item and observed that all the arguments for and against the publication had long been exhausted. The time had come to take a decisive step in the matter. Perhaps the Committee could decide to publish an index of the yearbook as a preliminary measure, and to proceed with the actual publication when the financial position of the United Nations became sounder.

11. Mr. EL-ERIAN (United Arab Republic) agreed with the previous speaker that the time had come to take a final decision on the subject, since every aspect of the question had been thoroughly considered and general agreement, duly set out in a General Assembly resolution, had been reached on the principle of the value of and even necessity for a juridical yearbook. The resolution eliminated the controversy that had taken place on the contents of the yearbook and confined it to documentary material. Accordingly, the Committee was now in a position to take a decision, concentrating on two main points, the precise documentary contents of the yearbook and the financial implications of the project. The Ghanaian representative's suggestion did not seem to answer the question of determining when the Organization's financial circumstances would allow for publication; accordingly, he proposed that a small working group should be set up to consider the two aspects of the matter to which he had referred. The Committee could not afford to defer yet again a question which had engaged the attention of the Sixth Committee for almost ten years and had already aroused wide interest among non-governmental juridical bodies.

12. Mr. STAVROPOULOS (Legal Counsel) welcomed the pragmatic approach to the question adopted by the representative of the United Arab Republic. The establishment of a working group to consider the crucial matter of the contents of the yearbook and the available funds would surely lead to a practical solution.

13. U SAN MAUNG (Burma) noted that the Sixth Committee had considered the item under discussion for more than a decade without result. Everything worth having cost money. The real problem was to strike a balance between costs and contents. He was convinced that nothing would be accomplished on the present item unless a working group was appointed, and unless an attempt was made to persuade the Fifth Committee that the expenditure was worthwhile.

14. Mr. ROSENNE (Israel) recalled that his delegation had, from the time when the present item had first come up for discussion been favourably disposed to the idea of a United Nations juridical yearbook. He thought the proposal for a working group was an eminently practical approach. There were two points, however, on which he would like clarification from the Legal Counsel. First, it had been suggested that eventually the Sixth Committee would have to see if the Fifth

<sup>5/</sup> See Official Records of the General Assembly, Fourteenth Session, Sixth Committee, 641st meeting, para. 37.

Committee was willing to appropriate moneys to put the proposal for the yearbook into effect. Was he correct in thinking that the Fifth Committee could not impose a veto on the substantive decisions of another Committee? Second, the Secretary-General had previously submitted two statements on the financial implications of publishing the yearbook, one at the fourteenth session<sup>6/</sup> and one at the fifteenth<sup>7/</sup> session of the General Assembly. Could the Legal Counsel tell the Committee to what extent those estimates still stood with respect to the matters with which they dealt?

15. Mr. STAVROPOULOS (Legal Counsel) said in reply to the first question that in principle it was the duty of the Fifth Committee to inform the General Assembly of the costs involved in the substantive decisions recommended by the other Committees. The General Assembly itself decided whether or not to take the recommended action. He was not in a position to reply to the second question raised by the Israel representative, since the main expense in the publication of the yearbook would be for staff, and until the working group had indicated the minimum staff needed, any estimates of costs would be uncertain.

16. Mr. MILANKOVIC (Yugoslavia), Mr. SPERDUTI (Italy), Mr. JAMIR (India) and Sir Kenneth BAILEY (Australia) supported the proposal of the United Arab Republic for the appointment of a working group.

17. Mr. SPERDUTI (Italy) asked whether a definite time-limit would be set on the deliberations of the working group.

18. The CHAIRMAN noted that the members of the Committee were in general agreement that the item under discussion should be referred to a working group. The working group would consider the financial aspects of the publication of the yearbook, and the nature of the documents to be inserted in it. He did not think that a definite time-limit should be set for its activities, but it would be requested to complete its work as quickly as possible. He would give his views on the composition of the working group at the next meeting of the Committee.

*The meeting was suspended at 4.15 p.m. and resumed at 4.50 p.m.*

## 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.504/Rev.1 and 2) (continued)

19. Mr. STAVROPOULOS (Legal Counsel), referring to the request made at the previous meeting for a list of the parties to the agreements enumerated in document A/C.6/L.498, said that such a list was available for consultation in the Treaty Section of the Office of Legal Affairs.

20. Sir Kenneth BAILEY (Australia) introduced a second revised text of the draft resolution (A/C.6/L.504/Rev.2) and said that the sponsors, without changing the substance, had clarified certain points raised in the discussion at the previous meeting. As he had explained at that meeting, operative paragraphs 1 and 2 provided for purely administrative action by the Secretary-General, i.e., the receipt of instruments

indicating the desire of States to become parties to one or more of the agreements concerned. The condition on which the Secretary-General was authorized to accept those instruments was that the majority of the parties to the agreement had not specified their objection to its being opened. The sponsors still thought that express consent was not necessary, because no juridical consequence followed from receipt and deposit of the instruments under operative paragraphs 1 and 2. Operative paragraph 3 was designed to lead to the creation of treaty relations between the States depositing the instruments and one or more existing parties to the conventions. The treaty relations would be created at the instance of the existing party; if the existing party desired to recognize the effect of the deposit of instruments, it would take the necessary steps required by its constitutional processes to do so. The second revision included three changes, which were intended to make those points clear. First, operative paragraph 3 now included a recommendation that all States parties to the conventions concerned should "communicate to the Secretary-General as depositary their consent to participation in the conventions of States so depositing instruments of acceptance". A State communicating its consent to the Secretary-General would, before doing so, take whatever steps were necessary in accordance with its constitutional processes, and the silence of an existing party would not make it a party to the convention with States depositing instruments of acceptance. Secondly, since the Italian representative had pointed out (748th meeting) that the process was not strictly the accession of parties to a convention but rather the participation of new States with existing parties on the basis of the terms of already existing conventions, the word "accession" had been replaced by "acceptance" in operative paragraphs 1, 2 and 3. Thirdly, operative paragraph 4 had been added to meet the point raised by the Cambodian representative (748th meeting, para. 11). The communications which the Secretary-General would bring to the notice of Members under that provision would be deposits of instruments of acceptance, communications of consent by existing parties, and receipt of objections from existing parties.

21. Mr. RIPHAGEN (Netherlands) said that his delegation would support draft resolution A/C.6/L.504/Rev.2, which would be a further useful step in enabling the United Nations to take over the functions of the League of Nations. As the representative of Australia had pointed out, that draft introduced a purely administrative procedure, which raised no technical or constitutional questions. The doubts expressed by certain delegations concerning the questions of State succession and parliamentary approval should not be allowed to stand in the way of its adoption, since the functions envisaged for the Secretary-General in operative paragraphs 1 and 2 were merely those of a depositary.

22. Mr. ZOUHIR (Tunisia) observed that draft resolution A/C.6/L.504/Rev.2 did not in any way alter the substance of draft resolution A/C.6/L.504/Rev.1, but merely showed an effort on the part of the sponsors of the first draft to circumvent certain legal difficulties by emphasizing the administrative role of the Secretary-General. The restriction of acceptance of general multilateral agreements to States Members of the United Nations or members of the specialized agencies, referred to in operative paragraphs 1 and 2, was contrary to the position always taken by his delegation that participation in such conventions should be open to all States without exception. Moreover, since draft resolu-

<sup>6/</sup> Ibid., Fourteenth Session, Annexes, agenda item 57, document A/C.6/L.465.

<sup>7/</sup> Ibid., Fifteenth Session, Annexes, agenda item 66, document A/C.6/L.471.



tion A/C.6/L.504/Rev.2 had been submitted at a late hour, his delegation had not had time to make a thorough study of the draft's possible repercussions on its Government's domestic legislation. He therefore associated himself with the proposal, made by the representative of Panama at the 748th meeting (para. 45) that consideration of the question should be postponed.

23. Mr. THEYSSET (France) said that his delegation had certain misgivings with respect to draft resolution A/C.6/L.504/Rev.2. The representative of Italy had argued with some force that it would be legally sounder to request the express consent of the parties to the conventions in question rather than the views of those who were opposed to the proposed procedure. He, himself, had not been entirely convinced by the counter-argument that the result would be the same in any case and that it was more practical to rely on the objections of the parties. The question at issue was to invite a certain number of States bound by a given convention to agree to modify the rule of law adopted by them with a view to enlarging the scope of that convention. In his opinion, the least that could be done was to ask the parties concerned to express their positive agreement with the proposed procedure.

24. His delegation was also concerned about the connexion between draft resolution A/C.6/L.504/Rev.2 and the question of State succession. As had been pointed out in the first report on the law of treaties submitted by Sir Humphrey Waldock to the International Law Commission (A/CN.4/144, commentary to art. 13) the fact of giving new States the right to accede to former multilateral treaties amounted to adopting a position on a question of State succession. To give them that possibility seemed to imply acceptance of the so-called *tabula rasa* principle, namely, that the new States had been unable to become parties to former conventions by virtue of agreements concluded in their name by the Powers which had formerly represented them on the international level. It was not, however, either the time or place to discuss the substance of the question of State succession; that question was already included in the agenda of the International Law Commission's Sub-Committee on the Succession of States and Governments, and any opinion which the Sixth Committee might express on the subject in draft resolution A/C.6/L.504/Rev.2 would, in his view, only anticipate and prejudge the decision to be taken by the Sub-Committee.

25. Another point to be considered was the nature of the accession which would be open to the new States; in that connexion, the sponsors of the draft should make it clear that such accessions could only be "without reservations". The practice of formulating reservations was undoubtedly of recent origin and he doubted if it could be followed with respect to the older agreements listed in document A/C.6/L.498.

26. In conclusion, he expressed agreement with those delegations which had felt that the questions raised by draft resolution A/C.6/L.504/Rev.2 were not yet ripe for discussion and that the Committee would be well advised to postpone any vote on that draft.

27. Mr. ANOMA (Ivory Coast) said that unless a State which was one of the original parties to a general multilateral convention considered that the opening of that convention to accession by a new State would not be in its national interest, or would conflict with its

constitution, his delegation saw no reason, *a priori*, why the accession of new States, on as broad a basis as possible, would not be to the benefit of that State. That was particularly true with regard to such conventions as those relating to the suppression of slavery and the control of narcotic drugs. His delegation considered that draft resolution A/C.6/L.504/Rev.2 constituted a progressive step in the development of international law and would vote for it. He suggested, however, that it would be more logical to rearrange operative paragraph 3 so that the phrase beginning "communicate to the Secretary-General as depositary their consent" would precede the phrase beginning "recognize the legal effects of instruments of acceptance".

28. Mr. ROSENNE (Israel) said, in reply to the representative of France, that the Australian representative had already made it clear that there was no connexion between the question of the accession of new States to general multilateral conventions, dealt with in draft resolution A/C.6/L.504/Rev.2, and that of State succession. The aim of the draft resolution was to deal with the situation which prevailed when there was no question of State succession, and its adoption would not in any way prejudge the work of the Sub-Committee on the Succession of States and Governments—since the International Law Commission itself had made it clear that it regarded the accession of new States as a primarily administrative matter—or the position of States on the question of State succession. He drew attention to paragraph (10) of the Commission's commentary on article 9 of the draft articles on the law of treaties (A/5209, chap. II), which referred specifically to the possibility of "administrative action to be taken through the depositaries of the individual treaties to obtain the necessary consent of the States concerned in each treaty". The only problem raised by the present draft resolution was that of enabling States which had not been members of the League of Nations to accede to conventions which had been concluded under the auspices of the League.

29. Mr. USTOR (Hungary) said that he had already stated his delegation's objections to draft resolution A/C.6/L.504/Rev.1, which discriminated against States which were non-members of the United Nations. The Australian representative had explained (748th meeting) that the sponsors of that draft resolution had been unwilling to adopt the "all States" formula because there were certain entities in the world which called themselves States but with which other States were unwilling to enter into treaty relations. There could be no objection to the use of the "all States" formula in the new draft resolution (A/C.6/L.504/Rev.2), however, as operative paragraphs 3 and 4 had completely changed the situation by providing that all States parties to the conventions in question would communicate to the Secretary-General as depositary their consent to participation in the conventions of States depositing instruments of acceptance. For that reason, he hoped that the sponsors of the new draft would give serious consideration to the advantages of adopting the "all States" formula in operative paragraphs 1 and 2. If the draft were changed in that way, it would satisfy both parties: those wishing to be bound only vis-à-vis United Nations Members—they would have to give their consent to participation in that sense—and those consenting to the participation of all States.

The meeting rose at 5.45 p.m.