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Chairman: Mr. Abdullah EL-ERIAN
(United Arab Republic).

AGENDA ITEM 87

Reports of the International Law Commission on the work of its sixteenth and seventeenth sessions (A/5809, A/6009; A/C.6/L.557, L.558)

1. The CHAIRMAN invited attention to the Secretary-General's note concerning the financial implications of the International Law Commission's decision to hold a four-week winter session in Monaco from 3 to 28 January 1966, and to reserve the possibility of a two-week extension of its 1966 summer session until 22 July 1966 (A/C.6/L.557). He requested the members of the Committee to convey the views of their Governments on those proposals to the Secretariat. If the General Assembly should approve the Commission's plans for future meetings, the necessary administrative arrangements would have to be made as soon as possible. He noted further that the Secretariat was already taking the necessary steps to carry out the Commission's decisions with respect to co-operation with other bodies and the exchange and distribution of its documents (A/6009, chap. V, A and B).

At the Chairman's invitation, Mr. Bartoš, Chairman of the International Law Commission at its seventeenth session, took a place at the Committee table.

2. Mr. BARTOS (Chairman of the International Law Commission at its seventeenth session) said that he was introducing the report of the Commission on the work of its seventeenth session not as a mere formality, but in order to seek guidance from the Committee for the work of the Commission on the codification and progressive development of international law. The formulation of international legal norms was a complicated process which required co-operation between political forces and technically qualified jurists in a search for rules adapted to the conditions of the contemporary international community. It was the duty of the Commission to ascertain the immediate needs of that community and it therefore appealed to the legal representatives of Governments to state quite clearly what their Governments required of the Commission. Under the Charter, the Commission was to go beyond the technical task of codification and to ensure the progressive develop-

ment of present-day international law. Yet the tendency of jurists was to confine their efforts entirely to codification and to lose sight of the necessity to develop a dynamic system of law capable of meeting the changing needs of a rapidly developing world. Such progressive development of law had been achieved at the 1958 United Nations Conference on the Law of the Sea, when the Convention on the High Seas^{1/} had been drawn up to ensure respect for the principle of freedom of the seas, while the Convention on the Continental Shelf^{2/} and the Convention on Fishing and the Conservation of the Living Resources of the High Seas^{3/} had been designed to meet present and future practical needs. It was by combining work on principles with efforts to establish practical norms that the Commission could effectively contribute to the progressive development of international law.

3. The Commission's report on the work of its seventeenth session (A/6009) indicated that the same members had continued the work begun at its sixteenth session. Unfortunately, they were unable to give their full time to the Commission's work and it was difficult to bring them together at meetings because they often held important posts in their own countries, sometimes in Government Ministries, or were professors of law at universities and could not absent themselves at will. Those circumstances should be borne in mind by Governments in proposing candidates for election to membership of the Commission.

4. Under the Statute of the Commission and in accordance with resolutions of the General Assembly, twenty-six topics had been selected for study by the Commission. Of that number, four had been dealt with and two had almost been disposed of. However, the Commission still had an ambitious programme consisting of fifteen priority subjects and five to which absolute priority had been given. The nature of those subjects compelled it to work with due deliberation. But the term of office of its present members expired on 31 December 1966 and there was a danger that if it did not complete the work on the two subjects it was discussing, all its earlier labours might go for naught. It was for that reason that it had requested an extraordinary session in January 1966, and reserved the possibility of a two-week extension of its regular summer session in 1966.

5. The first draft of the articles on the law of treaties had been completed in 1964. The General Assembly

^{1/} United Nations Conference on the Law of the Sea, *Official Records*, vol. II, *Annexes* (United Nations publication, Sales No.: 58.V.4, Vol. II), pp. 135-139.

^{2/} *Ibid.*, pp. 142 and 143.

^{3/} *Ibid.*, pp. 139-141.

had been unable to consider that draft at its nineteenth session, and the Commission had gone ahead with its revision and invited comments from Governments. Some Governments had refrained from commenting, but an inquiry had revealed that they frequently agreed with the Commission's formulation. The comments of many Governments had not yet been received and the comments of others had still to be reconciled before the draft articles could be submitted to the Assembly for approval. In their final form, the draft articles would be divided into three parts and constitute a single convention. The Commission's goal was to complete the commentaries and the final draft in time for submission to the General Assembly at its twenty-first session.

6. Part I of the draft articles (A/6009, chap. II, B) would not be cast in its final form until the proposed January 1966 session of the Commission. The text had been presented without the commentaries because all comments from Governments had not yet been received. It should be regarded as a provisional text; the Commission reserved the right to change the commentaries and to alter the texts of the articles themselves.

7. The forty-four draft articles on special missions which the Commission had adopted were set out in chapter III of the report. Special missions were becoming more and more frequent, but the rules applicable to them were very diverse. In the draft articles the Commission had sought to combine positive law by analogy with diplomatic law, practice which was not settled practice, and the progressive development of the law. As Mr. Verdross had said at a meeting of the International Law Commission, it was doing pioneer work. The Commission accordingly asked Governments to examine the text most carefully and critically and to state their objections and comments, so that it could examine the articles on second reading at its 1966 summer session and submit its final report to the General Assembly.

8. The Commission had had some doubts whether a distinction should be made between special missions and so-called high-level special missions. It had neither approved nor disapproved the draft provisions concerning high-level special missions prepared by the Special Rapporteur, and had included them as an annex to chapter III of the report simply as a trial, in order to induce States to give their opinions.

9. The Commission's work programme for 1966 was modest but realistic—to complete the work in progress on the law of treaties and special missions. It had dealt with three other topics—succession of States and Governments, State responsibility, and relations between States and inter-governmental organizations, but would be unable to complete work on them before the terms of office of its present members expired.

10. Unfortunately, the Commission had not in the past given sufficient effect to the provisions of articles 25 and 26 of its Statute concerning co-operation with other bodies. At present, it sent an observer to the annual meetings of the Inter-American Council of Jurists and the Asian-African Legal Consultative

Committee, but it did not maintain relations with governmental or inter-governmental organizations of jurists. The financial implications of such activities had been a serious obstacle which the Commission had been unable to surmount. It was for the members of the Committee to determine whether the Commission, like other United Nations organs, had the right also to establish relations with advisory bodies similar to the non-governmental organizations in consultative status with the Economic and Social Council. It was surprising that the Commission had not established relations with the Institute of International Law, the International Law Association, and the many other private organizations throughout the world concerned with international law. The Secretariat had made efforts in that direction, but had had no success.

11. In chapter V, B, of the report, the Commission drew attention to the question of exchange and distribution of its documents. The Commission did not even have an arrangement for an exchange of publications with the scientific institutions of law. The Commission could not expect to call upon the public to express opinions concerning its work, if it did not make its documents available.

12. Referring to chapter V, C, he expressed the hope that the Committee would approve the Commission's request that it should be permitted to hold meetings in January 1966 and should be able, if necessary, to extend its regular session in summer 1966.

13. All the members of the Commission were convinced that the Seminar on International Law, held at the European Office of the United Nations, had been a very successful venture and wished to commend the jurists in the Secretariat who had organized it. The project deserved to be supported and developed. They had noted, however, that most of the eighteen participants at the first seminar were Europeans. The Legal Counsel, on behalf of the Secretary-General, had agreed that in future the number of participants should be increased and that, in accordance with General Assembly resolution 1968 (XVIII), more nationals of developing countries should attend.

14. In conclusion, he urged the Committee to approve the Commission's request for additional meetings, so that it could complete its work on the law of treaties and special missions, and to consider how conditions of work might be improved so that in the future the Commission would encounter fewer difficulties in performing its tasks.

15. Mr. FARTASH (Iran) suggested that the text of the introductory remarks of the Chairman of the International Law Commission should be circulated as a Committee document.

16. The CHAIRMAN, after consulting the Legal Counsel, said that there would be an extensive summary of Mr. Bartoš's remarks in the record of the meeting and that consideration would be given to circulating the full text as a document of the Committee.

The meeting rose at 12.5 p.m.