United Nations
GENERAL ASSEMBLY
TWENTIETH SESSION
Official Records

SIXTH COMMITTEE, 843rd MEETING

Thursday, 7 October 1965, at 10.50 a.m.

NEW YORK

CONTENTS

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.559) (continued)

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

1. Mr. AGO (Chairman of the International Law Commission at its sixteenth session) introducing the Commission's report (A/5809), analysed briefly the work of the International Law Commission at its sixteenth session and described the principles which had governed its approach to the various questions it had considered. He then emphasized the need for ever-closer co-operation between the Commission and the Sixth Committee, particularly in the light of General Assembly resolution 1907 (XVIII) which had designated 1965 as International Co-operation Year and General Assembly resolution 1968 (XVIII) which referred to suggestions in the report of the Secretary General relating to the proclamation of a United Nations decade of international law and an initial programme of assistance and exchange in the field of international law.1/

2. When the International Law Commission had been set up, it had seemed reasonable to suppose that its task, though important, was by no means urgent. Since its establishment, however, the world had undergone such profound changes that the work of codifying international law had taken on great urgency. Study of the great codifications of municipal law which had been carried out in the past revealed that they frequently coincided with great revolutions involving profound changes in the social structure of States or with events such as the creation of new forms of States, where political unification was accompanied and consolidated by juridical unification.

3. Thus, in the twenty years that the United Nations had existed, the world had witnessed events which had not only found their consummation but frequently also their genesis in that Organization and which represented for international society a revolution without precedent in history. In two great continents, nations which had previously lived in a state of dependence had liberated themselves, filling the stage of international life with an imposing number of new sovereign States, each with their own character, history, traditions, and philosophical, religious and juridical ideas.

4. The attitude of those new countries to international law frequently contained somewhat contradictory elements, for which profoundly attached to the principle of international law, which they considered to be the essential guarantee of their existence, such countries frequently distrusted the existing rules of that law, in whose formulation they had taken no part and whose provisions they sometimes suspected of representing a potential threat to the hardly won independence which was to them their most precious possession.

5. As an attentive reader of the proceedings of the Sixth Committee, he had been struck by the manifestations of that distrust which were sometimes to be found there, and he felt that the danger of the situation could hardly be over-emphasized. Laws were frequently broken, and indeed the fact that they were broken showed that there was a need for them, but the danger was infinitely greater when laws were not only broken but their very existence called into question. No human society could exist unless it was supported by a proper legal framework, and it was only when the law itself was in danger that society began to realize its true value and importance.

6. The solution to the problem was certainly not to enter into an examination of whether or not there were any grounds for the feelings of mistrust entertained by certain nations. No doubt some rules of international law were indeed worthy of mistrust, but in many cases that mistrust stemmed from ignorance of the real historical origins and true function of certain institutions, and on reflection it was frequently realized that rules which had at first seemed suspicious, fitted in perfectly with other totally different conceptions and were in fact purely and simply the fruit of the real needs of international relations.

7. However that might be, the task facing the international jurists of the world was to bring international law through the present transient state of crisis as rapidly as possible and to restore to it the certainty and authority it had previously enjoyed, while at the same time enriching it with the new and valuable contribution which the new countries of the world could make to it.

8. Those, then, were the reasons why the present world situation, which could justly be termed revolu-

1/ Official Records of the General Assembly, Eighteenth Session, Annexes, agenda item 72, document A/5585.

tionary, made the codification of international law more urgent than ever before. What must be done was to review the rules making up traditional international law, to revise them where necessary, to supplement and develop them on the basis of the new spirit which held sway in international life, and above all to make them more certain, more incontestable and more precise by bringing them from unwritten to written form. Only if that were done would international law win the consent of all States, old and new, and become once again the sure and solid foundation of international relations.

9. It was with those considerations in mind that the Commission had decided in its more recent sessions to intensify its acitivities and establish such an order of priorities that every subject of marginal interest would be set aside and it could concentrate on its most essential tasks. Thus, while it intended to complete the work already done on the codification of the law regarding diplomatic and consular relations, it intended to concentrate its main efforts on the great subjects of general international law, and it had been encouraged in that by the Sixth Committee's resolution, adopted by the General Assembly as resolution 1902 (XVIII), recommending that the Commission should continue its work on the codification and progressive development of the law of treaties, State responsibility and the succession of States and Governments.

10. The Commission had set itself the task of completing its draft on the law of treaties before the expiration of its term of office, and it hoped that the new Commission elected in 1966 would be able to complete the work on State responsibility and the succession of States and Governments. Nevertheless, the work of codification would be far from finished when the Commission itself had completed its work on a given question, for there remained the re-examination of the Commission's draft and all the complex but indispensable procedures associated with the preparation, adoption and final ratification of the convention which would embody the draft. In default thereof the Commission could limit itself to the preparation of restatements, of limited usefulness in view of the international situation. That was why the International Law Commission considered close and continuing cooperation with the Sixth Committee to be an essential condition for success in the great task which faced them. If the United Nations succeeded in its great work of codifying the basic subjects of international law, it could pride itself on having made an unprecedented contribution to the stabilization and development of the juridical bases of international relations.

11. Mr. PECHOTA (Czechoslovakia) said that his delegation whole-heartedly subscribed to Mr. Bartoš's view (839th meeting) that under the Charter, the Commission was to go beyond the technical task of codification and to ensure the progressive development of present-day international law. It also shared the Brazilian representative's conviction (840th meeting) that the Commission's role was to work for States, that it was the States that laid down the law. Accordingly, it considered that the main emphasis in the Commission's work should be on State practice, on the needs of international life, and on development towards progress and greater security. Without recognition of the symbiosis between law and society, the role of international law could not be enhanced. As Charles de Visscher had rightly said, international law had nothing to fear from the direct confrontation with the real;[2] institutions and norms appeared more charged with social substance and richer in human meaning when they were shown immersed in the element that gave them birth and where they found their daily application. The Commission would always receive the support of his delegation when it adopted progressive development as a cardinal principle of its activities.

12. His Government took a keen interest in the codification of the law of treaties; it considered the full exploration of that topic a daring experiment which, if successful, might considerably influence relations among States. It had submitted comments on the three parts of the draft articles, and continued to examine carefully the views and suggestions advanced by other States. His delegation would not yet comment in detail on the draft articles submitted in the Commission's report on the work of its seventeenth session, except to express its regret that the Commission, in article 19, paragraph 4 (b), and article 21, paragraph 3, had not distinguished between the maximum and minimum legal effects of an objection to a reservation to a multilateral treaty. As his delegation had pointed out at the 739th meeting of the Committee in 1962,[3] failure to make that distinction would result in the persistence of many undesirable and perhaps unintended lacunae in treaty relationships between some States.

13. Three main lines of approach to the codification of the law of treaties should be consistently pursued. Firstly, the rules should reflect the right of every State to participate on an equal footing in international relations and to become a party to open multilateral treaties, the object and purposes of which invited its legitimate interest. Any discriminatory practice excluding a member of the international community from such treaties violated the principle of universality and seriously inhibited peaceful coexistence and cooperation among States. His delegation hoped that the Commission, in its reconsideration of articles 8 and 9 and the definition of "general multilateral treaty", would be guided by the necessity of making multilateral treaties accessible to all States interested.

14. Secondly, all international treaties must be placed under the authority of international law. That involved elevating the legal and moral standards applied at the time of the conclusion of treaties. It was inconceivable that States should be free to derogate in their treaty relations from imperatives established by international law. All treaties obtained under duress, by the threat or use of force against a contracting State, or which conflicted with the peremptory rules of international law, should be considered as void. States—particularly small countries and those which had recently gained their independence after a long

---

2/ Charles De Visscher, Theory and Reality in Public International Law (Princeton, New Jersey, Princeton University Press, 1957), p. xiii.

3/ Official Records of the General Assembly, Seventeenth Session, Sixth Committee.

struggle against colonialism—should be given guarantees that their freedom would not be endangered by unequal or imposed treaty obligations. That had been the attitude of his delegation in giving its wholehearted support, at the 787th meeting[4] of the Committee, for the draft articles on the invalidity and termination of treaties.

15. Thirdly, the future code of the law of treaties should be freed from all transitory matter to ensure its permanent value. For example, there was no room in the draft articles for the obsolete idea of the so-called colonial clauses. While his delegation agreed with the Commission's decision to redraft the articles, where necessary, to omit merely descriptive elements, it hoped that the decision would not be misapplied to delete, or over-generalize, substantive provisions on which there was or might be disagreement.

16. His delegation maintained its opinion that the transformation of the draft articles into a general multilateral convention at an international conference of plenipotentiaries convened under United Nations auspices was the only feasible way to give full effect to the Commission's work. As there seemed to be growing support for the idea of convening such a conference at the earliest possible date, the Committee might ask the Commission, through its Chairman, to convey to the General Assembly any ideas it might have concerning procedural and organizational problems connected with the preparation of the conference.

17. His delegation approved of the manner in which the Commission was dealing with the topic of special missions. Further thought should be given, however, to the scope of application of the draft articles. Experience suggested that it might be difficult to achieve uniform application of the articles unless there was uniformity of views concerning the characteristics of a special mission. In view of the constantly increasing number of special missions entrusted with tasks ranging from the highly political to the purely technical, it might be advisable to draw a clearer line between the kind of missions that fell within the draft articles and the kind that did not. While it would not, for the time-being, take a position on whether a separate convention, an additional protocol to the 1961 Vienna Convention on Diplomatic Relations,[5] or some other method should be used to give effect to the draft articles, his delegation agreed that the draft articles should be embodied in an international treaty. In many countries, including his own, the according of privileges and immunities to additional categories of foreigners was contingent upon the consent of the highest legislative organ. Only by adhering to a multilateral treaty, which was subject to approval by Parliament, would such States be in a position to give effect on their territory to the rules concerning privileges and immunities of special missions.

18. Lastly, his delegation noted with satisfaction the organization in 1965 of a successful Seminar on International Law by the European Office of the United Nations and the Commission, and supported the Commission's recommendation that further Seminars should be organized in conjunction with its future sessions (see A/6009, para. 71).

19. Mr. SINCLAIR (United Kingdom) said that the fact that the Committee had before it reports covering the Commission's work for two years enabled it to appreciate more fully the elements on continuity in that work. The Committee could see the intensification of the efforts towards producing a final set of draft articles on the law of treaties, and the very real progress achieved on the subject of special missions. The Commission's decision to complete the study of the law of treaties and the subject of special missions before the end of 1966 was wise and far-sighted. While it might be a cause for regret that, as a result, work on other priority projects had had to be put back, his delegation considered that, in the interests of orderly progress in the progressive development and codification of international law as a whole, the Commission must now complete its work on the two topics to which it had given the highest priority.

20. On the law of treaties as a whole, his delegation wished to express its satisfaction at the progress made by the Commission over the past two years. He would not offer any remarks of substance on revised draft articles 0-29 bis in part I (ibid., chap. II), as his government had not yet had the opportunity to study them in detail. He noted, however, that the Commission had postponed until its next session a decision on the difficult issue of participation in a treaty. His Government's views on that point were set out in its written comments (A/CN.4/175). He hoped that the Commission could find a solution to that question which would take into account the various constructive criticisms of the Commission's earlier statement of the principle involved.

21. Part III—draft articles 55-73 (see A/5809, chap. II, B), completed the Commission's initial statement on the law of treaties in its entirety, and it was now possible to survey the work as a whole. His delegation suggested that, during its next two sessions, the Commission might devote particular attention to the relationship between certain draft articles in each of the three parts. There was a danger of overlapping or possibly even inconsistent provisions. For example, the question of the amendment of a treaty by a later treaty might involve consideration of the draft articles dealing with the conclusion of treaties, with the termination of a treaty in part by a later treaty (article 41),[6] with the effect of treaties of third parties (article 61) and with the application of treaties having incompatible provisions (article 63) it would be desirable for the Commission to study closely the interaction of various related articles in each of the three parts in order to ensure that any ambiguities or inconsistencies were removed.

22. His observations on the draft articles in part III were not exhaustive, and he reserved his Government's right to submit written comments. In general, his Government was satisfied that the draft articles correctly reflected State practice as it had developed, was developing and should develop. The admixture

4/ Ibid, Eighteenth Session, Sixth Committee.

5/ See United Nations Conference on Diplomatic Intercourse and Immunities, Official Records, vol. II, Annexes (United Nations publication, Sales No.: 62.X.1).

6/ Official Records of the General Assembly, Eighteenth Session, Supplement No. 9, chap. II, B.

of elements of codification and progressive development was on the whole nicely calculated. Accordingly, his comments would largely be confined to points of detail on which some further clarification was desirable.

23. Although the subject matter of draft article 63 (application of treaties having incompatible provisions) was complicated, the principle involved was relatively simple. As the Commission recognized, there was a close link between that article and the provisions of articles 58 to 60 concerning the legal effects of treaties on third States and of articles 65 to 68 concerning the modification of treaties. In his delegation's view, the provisions of draft article 63 were consistent with the normal operation of the pacta tertiis principle and with express provisions in chains of treaties dealing with the same subject-matter. Accordingly, it saw no great difficulty in the operation of article 63 where the point at issue was the compatibility of one general multilateral treaty with a later general multilateral treaty or of one regional treaty with a later regional treaty. The Commission had rightly drawn attention to the relationship between article 63 and article 41 in paragraph 12 of its commentary, and the Commission's further proposals would no doubt be directed towards avoiding any overlap between the two provisions. The test of incompatibility between two instruments contained in article 63 and also in article 67 was of necessity an imprecise test open to subjective interpretations. The same test of incompatibility was to be found in article 18 dealing with reservations. Those cases confirmed his delegation's belief that provision should be made for the independent adjudication of disputes which might arise in the application of the whole range of articles.

24. Article 64 dealt with the severance of diplomatic relations on the application of treaties. His delegation at the 786th meeting 7/ of the Committee had pointed out that articles 45 and 46 dealing with severability of treaty provisions were not free from difficulties since in practice most provisions of international agreements were so interrelated that few of them were clearly severable from the remainder of the treaty with regard to their application. In his delegation's view, that comment applied with equal force to article 64, paragraph 3. Another and perhaps even more important point was that paragraph 2 of article 64 referred to the disappearance of the means necessary for the application of the treaty, and paragraph (5) of the commentary gave as an example a situation where the application of the treaty was dependent upon the existence of the diplomatic channels. There might be a small category of treaties of which that latter comment was true—for example, the 1961 Vienna Convention on Diplomatic Relations—but even that Convention, in dealing with the severance of diplomatic relations, made provision for the sending State to entrust the protection of its interests and those of its nationals to a third State acceptable to the receiving State. His delegation considered in general that, where a protecting Power had been appointed, there was little or no room, save in exceptional circumstances, for the application of the notion of supervening impossibility of performance. It accordingly suggested that the Commission should take another look at article 64, paragraphs 2 and 3, which seemed not to be altogether satisfactory.

25. His delegation found little difficulty with articles 69 to 73 on interpretation of treaties, which, in its view, reflected existing international law and practice. It believed that the Commission had acted wisely in taking the text of the treaty as the primary basis of interpretation. It also agreed that the principle of effective interpretation was sufficiently covered by the provision that a treaty should be interpreted in good faith in accordance with the ordinary meaning to be given to each term in the context of the treaty and in the light of its objects and purposes. On the point discussed in paragraph (11) of the commentary on article 69 concerning the application of the "inter-temporal" law to treaties, his Government favoured the view taken by the majority within the Commission.

26. He recalled the draft article on the application of treaties to individuals which the Special Rapporteur had proposed to the Commission in his third report 8/ as article 66. That proposed article had provided that where a treaty applied to individuals, it was applicable either through the States parties to the treaty by their national processes of law or by international means established in the treaty. His delegation believed that a minimum provision of that nature was well supported by contemporary international law and practice, particularly in respect of human rights, and accordingly regretted that the Commission had not incorporated a draft article dealing with that point.

27. He would not comment on the substance of the draft articles on special missions, since his Government was studying the texts and hoped to submit written comments by May 1966.

28. Subject to a resolution of the necessary financial and administrative problems, his delegation warmly supported the Commission's proposals to hold a winter session in 1966 and to reserve the possibility of an extension of its 1966 summer session. It was important that the Commission should complete its work on the law of treaties and special missions before its membership was changed.

29. The success of the Seminar on International Law, held in 1965, augured well for the future. He congratulated the European Office of the United Nations on having taken that initiative and hoped that it would be possible to organize further seminars in the future. It might be useful to discuss arrangements for future seminars in the context of the third agenda item.

30. Lastly, his delegation would support draft resolution A/C.6/L.559, but its concurrence in the fifth preambular paragraph should be understood in the light of his preceding remarks concerning the proposal for a winter session.

31. Mr. OUMA (Uganda) commended the International Law Commission upon the work it had accomplished.

32. Without prejudice to the comments of his Government, he said with regard to the scope of the draft articles on the law of treaties that those articles

7/ Ibid., Eighteenth Session, Sixth Committee.

8/ See Yearbook of the International Law Commission, 1964, vol. II, documents A/CN.4/167 and Add.1-3.

dealt solely with treaties concluded between States, thus limiting their usefulness. The development of the law of treaties was necessarily influenced by the practical requirements of international life, and the increasing number of international organizations was a significant aspect of the modern era. Consequently, the law of treaties should be concerned not only with protecting the interests of States, but also with the needs and interests of non-State entities. A convention codifying the law of treaties should be broad enough in scope to embrace the interests of subjects of international law other than States. He therefore supported the theory of the so-called "centralization" of the law of treaties. It was essential to control the force and direction of the law of treaties and the treaty-making capacity of international organizations should not be restricted by making unfavourable comparisons with the treaty-making capacity of States.

33. The delegation of Uganda endorsed the Commission's proposals for a four-week winter session in 1966 and an extension of its regular 1966 summer session to enable it to complete the work on the law of treaties with its present membership. It also endorsed the Commission's recommendations regarding seminars on international law as an effective means of disseminating knowledge of international law, particularly in the newly-independent countries.

34. Mr. USTOR (Hungary), after congratulating the Commission upon its excellent reports, endorsed the decision to present the draft articles on the law of treaties in the form of a three-part single convention limited to the question of treaties between States (see A/5009, paras. 18 and 20).

35. The draft prepared by Mr. Bartoš as Special Rapporteur on the question of special missions and which appeared in his first [9] and second (A/CN.4/179) reports, was of outstanding importance for the science and practice of international law. The need for a special set of legal rules to govern special missions as distinct from permanent diplomatic missions reflected a rapidly changing world in which such special missions were more numerous than at any other time in history. Moreover, they were not covered by any universally and uniformly developed customary rule of law. In seeking to establish an international regulation of special missions, the Commission had to agree on a definition of special missions and then to decide what privileges and immunities should be extended to them.

36. The decision as to the privileges and immunities to be extended to special missions should normally be guided by the relevant provisions of the 1961 Vienna Convention on Diplomatic Relations, and to the extent that the Commission had reflected those provisions in its draft (see A/6009, chap. II, B), his delegation found it satisfactory. However, the Commission's draft contained no article defining special missions as distinct from permanent diplomatic missions. It could be inferred from article 1, however, that a special mission was a mission sent by one State to the other with the consent of the latter for the performance of special tasks and for a limited time. According to the draft and the commentary, no specific formalities were required either for the sending of the mission or for its acceptance, which presumably might even be tacit; there was no obligation to present credentials and no sanctions would be taken if the sending State should fail to notify the receiving State of the sending of the mission and its composition. Moreover, the functions of a special mission commenced as soon as it entered into official contact with the appropriate organs of the receiving State and those appropriate organs were not defined and could presumably be agreed upon informally. In the view of the Hungarian delegation, it was essential that the competent department of the Ministry of Foreign Affairs should be kept informed of special missions and their composition and should know to what specific privileges and immunities their various members were entitled. The Commission's draft should contain stricter rules delimiting the notion of special missions and specifying which of their members could claim privileges and immunities. A stricter formulation was necessary particularly because States were reluctant to accept international obligations which increased the number of persons enjoying immunities on their territory; further, the additional burden placed upon them in respect of special missions should be made as tolerable as possible. He hoped his remarks would be taken into account by the Special Rapporteur in formulating an introductory article on the terms used in the draft.

37. He also urged the Commission to bring the language of its draft into conformity with the terminology of the 1961 Vienna Convention on Diplomatic Relations. In the latter instrument, the members of the diplomatic missions included the head of the mission, the diplomatic staff, the administrative and technical staff and the service staff. In draft articles 3, 4 and 6 on special missions, the latter comprised only the head of the mission and other principal delegates. Uniformity on this subject would facilitate the work of legislators of the contracting States in translating the provisions of two similar conventions into domestic law.

38. The right granted under article 15 to use the flag and emblem of the sending State on the means of transport of the mission was more extensive than the right granted under article 20 of the 1961 Vienna Convention on Diplomatic Relations and that might not be generally justified.

39. As regards paragraph (2) of the commentary on article 15, he proposed a solution along the lines of article 29, para. 3 of the 1963 Vienna Convention on Consular Relations [10] which subjected the right to use the flag and emblem of the sending State to the laws, regulations and usages of the receiving State. It went without saying that the local restrictions should not be discriminatory and should not nullify the aforementioned right.

40. Commenting on article 16, he suggested, in the interests of clarity, that the substance of paragraph (3) of the commentary should be incorporated in the text of the article itself.

[9] Ibid., document A/CN.4/166.

[10] See United Nations Conference on Consular Relations, Official Records, vol. II, Annexes (United Nations publication, Sales No.: 64.X1).

41. He congratulated the Special Rapporteur on having appended foot-notes to the draft articles on special missions; they had proved very useful to him in his research work. He also congratulated the European Office of the United Nations upon the success of the first Seminar on International Law.

42. Mr. SAPOZHNIKOV (Ukrainian Soviet Socialist Republic) recognized that the International Law Commission had accomplished much useful work in the progressive development of international law, particularly in promoting the conclusion of the Conventions dealing with the law of the sea, and the 1961 Vienna Convention on Diplomatic Relations and 1963 Vienna Convention on Consular Relations. He hoped that the Commission would draft articles on the law of treaties acceptable to all States.

43. The codification and progressive development of the law of treaties could have great practical significance: by resolving doubts concerning the effects of treaties, it would strengthen progressive legal principles governing the relations between States. As stated in the Preamble and the first few Articles of the Charter, strict compliance by States with international treaty obligations was a prerequisite for establishing confidence between States and for peaceful co-operation. The task of the Commission was to define the conditions for compliance with treaty obligations, for such compliance was particularly important at a time when the imperialist Powers were intervening in the internal affairs of States and were guilty of direct acts of aggression and of undermining the basic principles of international law. The United States aggression in Viet-Nam and its violation of the 1954 Geneva Agreements[11] showed how the peace could be jeopardized by the violation of international obligations and the flouting of international law.

44. In stressing the rule that treaties were binding upon the parties and that the principles of international law must be respected, he emphasized that not all treaties had the same juridical value. As stated in article 37 of the Commission's draft articles,[12] a treaty was void if it conflicted with a peremptory norm of general international law. Among the norms on which international treaties should be based were the principles of equality and of free consent of the contracting parties. Indeed, international law recognized certain exceptions to the principle of free consent in cases where treaties imposed obligations on aggressor States guilty of unleashing aggressive wars, and he suggested that the Commission should further clarify the draft rules in article 59 (see A/5809, chap. II, B) in that regard.

45. The general principle was that, in normal circumstances, compliance with the treaty was based on the freely given consent of the contracting parties and it could not be over-emphasized that consent to enter into or invoke a treaty should not merely be formal consent; it should be defined as the freedom of the contracting party to express consent. Similarly, the equality of the contracting parties was not a formal equality; it should mean actual equality in implementing the rights and obligations deriving from the treaty.

46. Many treaties which protected only one of the parties had been imposed by imperialist Powers on weaker nations through economic, military and financial pressure and by other means incompatible with international law. Such treaties served as a screen for neo-colonialist policies: they created the appearance of relations of equality and the illusion of a pact between equal partners, but they actually concealed an unequal relationship in which one party was subordinated to the other and they denied the weaker State the means of defending its sovereign rights. That category of treaties included those concluded by metropolitan Powers with their colonies at the time of granting independence or prior to the granting of that independence and as a condition for the new status. Those treaties had in many cases been imposed on the former colonial States, which had been denied freedom to accept the terms. They contained provisions granting special privileges and advantages to the metropolitan country in violation of the basic principles of international treaty law. Similarly, certain economic treaties had been imposed on some developing countries under which foreign monopolies were guaranteed unhampered economic activity and an ample source of raw materials. Those were the so-called "open door" treaties under which advantages were given exclusively to the economically powerful States and the developing countries were opened to penetration by foreign monopolies. No account was taken of the unequal economic relationship between the contracting parties. Such treaties were incompatible with the principles of the sovereign equality and self-determination of peoples and in violation of the Charter of the United Nations and of the Declaration on the Granting of Independence to Colonial Countries and Peoples. The developing countries should have a legal right to declare them invalid and to abrogate them. The question was of paramount importance at the present time when the main problem of decolonization was to liquidate the economic, social and other consequences of colonialism, which had been concealed in unequal treaties based on obsolete colonial law. The Commission could not ignore the trend to eliminate the last vestiges of colonialism fostered by the United Nations and reflected in Assembly resolutions; the development of the principles of international law should consolidate that trend. A plea to that effect had been made by the General Assembly in the preamble to resolution 1803 (XVII) on permanent sovereignty over natural resources. Although the resolution contained certain provisions infringing the rights of sovereign States with respect to property—it might be regarded as releasing former colonial countries from the obligations which were imposed under the colonial régime with respect to property.

47. Noting that the Commission had deferred decision on articles 8, 9 and 13 dealing with participation in a treaty (see A/6009, para. 25), he strongly supported the view that a treaty should be open to signature by all States. The rules of international law should be binding upon all States and the exclusion of any State from participation in the convention would contravene

---

11/ See Further documents relating to the discussion of Indo-China at the Geneva Conference, June 16-July 21, 1954, London, H.M. Stationery Office, Cmd. 9239.

12/ Official Records of the General Assembly, Eighteenth Session, Supplement No. 9, chap. II, B.

the very purpose of a convention on the law of treaties and adversely affect international co-operation.

48. Mr. HARGROVE (United States of America) said that as his delegation's forbearance on an earlier occasion indicated, he regretted being compelled to take the floor by the Ukrainian representative's introduction into an otherwise pertinent statement of an extraneous and baseless accusation against the United States. His Government categorically rejected that accusation.

49. Mr. GYAWALI (Nepal) said that the draft articles on the law of treaties and on special missions contained in the reports on the International Law Commission on the work of its sixteenth and seventeenth sessions dealt with the subject-matter in an extensive manner which left little room for ambiguity or uncertainty, although various delegations to the Sixth Committee might not agree with certain aspects of their form or substance, as the statements of certain representatives, particularly those of the United States and the United Kingdom, had shown. He understood that the draft articles on the law of treaties had been transmitted to Governments for their written comments, while the draft articles on special missions had been submitted to the General Assembly and to Governments for information, so he reserved the right to comment on them if and when the occasion arose. His delegation would, however, like to make a few general remarks on the two reports of the International Law Commission which were before the Committee.

50. In the opinion of the delegation of Nepal, the form of the draft articles on the law of treaties should be such as might serve as a basis for a multilateral convention rather than a mere "code". He therefore supported the Commission's decision in its report on the work of its seventeenth session (ibid., para. 16) to codify the law of treaties in the form of a convention. The 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations, to which Nepal had recently acceded, represented the correct trend in the codification and progressive development of international law. He reminded the Committee that in order for international law to be universally acceptable it must have been evolved after due consideration of the different cultures, civilizations and social and economic structures of the various parts of the world. Self-evident though it was, that need was sometimes lost sight of, with resultant dissatisfaction and disharmony among States.

51. The delegation of Nepal approved the International Law Commission's programme of work for 1966 (ibid., chap. IV) and hoped that it would receive the approval of the competent authorities. Finally, the delegation of Nepal expressed its deep appreciation of the organization by the European Office of the United Nations of a Seminar on International Law, although at the same time it wished to stress the need to make available to the developing countries the services of a larger number of experts in international law so that those countries could close the gap which existed not only between them and the developed countries, but also between them and the more advanced developing countries with regard to international law.

The meeting rose at 1.25 p.m.

Litho in U.N. 77601—December 1965—2,000