United Nations
GENERAL ASSEMBLY
TWENTIETH SESSION
Official Records

SIXTH COMMITTEE, 850th MEETING

Wednesday, 13 October 1965, at 3.30 p.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 (continued) (A/5809, A/6009; A/C.6/L.557-L.561)

1. Mr. Manner (Finland) said that many difficulties arose in connexion with the delicate task of the codification of international law. Even when a given draft had been approved, there often appeared difficulties at a later stage in getting the final text adopted and ratified. For example, although fifty-one States had signed the 1963 Vienna Convention on Consular Relations,[1] only thirteen had deposited instruments of ratification, with the result that the treaty had not yet entered into force. The text of a multilateral treaty should be concise so as to enable as many States as possible to become parties to it. Generally, the reluctance of States to agree to be bound by a multilateral treaty dealing with important areas of international law could be overcome if the treaty was presented in the form of a code. Since there were good reasons, however, for presenting the law of treaties in the form of a convention, the text of that convention should be extremely condensed and simplified.

2. The observations of the Finnish Government had largely been taken into account by the International Law Commission in its last two drafts of the law of treaties; he would therefore direct his remarks to certain points of principle for consideration by the Commission. First, the Commission should reconsider its decision to exclude from the scope of the draft articles a provision concerning the rights and obligations of individuals. International law should recognize present-day technical and social developments and seek to regulate the rights and obligations of those individuals for whose acts States were responsible. Secondly, the Finnish delegation agreed that the draft articles need not include provisions concerning treaties between States and other subjects of international law such as international organizations, yet it might be desirable at a later stage to supplement the general law of treaties by a separate convention dealing specifically with that question. Thirdly, article 57 failed to take into account that the provisions of a treaty might be intended to be applicable outside the territories of the parties. The Commission should re-examine the question of revising the draft in order to cover treaties with extended territorial application. Another possibility would be to delete the whole article. Finally, although his delegation considered the proposed rules concerning the interpretation of treaties (articles 69-73) (see A/5809, chap. II, B) to be useful and appropriate, it had some doubt, in the light of the revisions made in part I of the draft articles (see A/6009, chap. II, B), whether all the rules on interpretation of treaties should remain in the final text. The codification of international law should not be so hampered by detailed rules as to leave no room for a further evolution of the law through custom and practice.

3. The text of the draft articles on special missions had obviously been intended to form the third part of a codification of international law on State relations, the 1961 Vienna Convention on Diplomatic Relations[2] and the 1963 Vienna Convention on Consular Relations having constituted the first two parts. That explained the fact that the new draft contained provisions of a very different and unequal nature. Articles 1-16 (ibid.) contained technical rules, most of which might better be included in a code rather than a treaty. Articles 17-44, which dealt with facilities, privileges and immunities, granted greater personal immunity to heads and members of special missions and their diplomatic staff than that accorded to career consular officers under the 1963 Vienna Convention on Consular Relations. By granting such broad immunity, the Commission had failed to recognize that most special missions were purely technical and that such drastic exemptions were therefore unnecessary. It should seek to limit the scope of application of those articles or, failing that, it should at least establish a clear distinction between different groups of special missions, and condense the articles as much as possible. In that respect, he agreed with the observations made by the Swedish representative at the 844th meeting.

4. The Finnish delegation approved the Commission's programme of future work, on the understanding that no additional expenditure would be incurred by holding the 1966 winter session outside Geneva. Moreover, the practice of extending the regular sessions might adversely affect the future composition and working conditions of the Commission.

---

[1] See United Nations Conference on Consular Relations, Official Records, vol. II, Annexes (United Nations publication, Sales No: 64.X.1)

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

5. He supported the draft resolution submitted by Lebanon and Mexico (A/C.6/L.559). With regard to the Costa Rican amendment (A/C.6/L.561), he noted that if seminars on international law were to be held in conjunction with the Commission's sessions, the number of participants could not be very large. On the other hand, if the intention was to organize regular seminars as a quasi-permanent institution, the question might better be discussed in connexion with item 89 on technical assistance to promote the teaching, study, dissemination and wider appreciation of international law.

6. Mr. SANMUGANATHAN (Ceylon) said that he appreciated the accomplishments of the International Law Commission and attributed the failure of some of its earlier efforts, as was the case, for example, with its draft Code of Offences against the Peace and Security of Mankind, [3] to the reluctance of States to use the machinery of law for the settlement of their differences.

7. The successive drafts of the law of treaties represented a valuable contribution to the codification and development of international law. There were some fine academic points, for instance, the question of what constituted fraud sufficient to vitiate a treaty; there were also some fine practical points, for instance, the problems of a depositary of a multilateral treaty in judging ratifications accompanied by reservations. However, he noted with regret that the Commission had thus far failed to agree on rules governing the crucial questions of participation in a treaty and creation of an independent forum to determine the justice of an asserted ground to invalidate, terminate or interpret the obligations of a treaty. Moreover, it was unfortunate that the Commission had deferred its study of remedies and responsibilities of States and that its present draft failed to reconcile conflicting opinions concerning indirect or economic coercion. A convention on the law of treaties should not merely restate in abstract terms rules which did not specifically commit the States parties. He hoped that the defects he had cited and the omission of rules governing treaties concluded by international organizations both among themselves and with States would be repaired in the final text. He supported the proposals for a winter session in 1966 and an extension of the regular 1966 summer session.

8. His delegation agreed generally with the approach of the Commission in dealing with special missions as something quite distinct from permanent missions, but was not yet certain whether it might best be dealt with in a separate convention rather than in a protocol added to the 1961 and 1963 Vienna Conventions. It would, however, welcome the inclusion of an article defining special missions as distinct from permanent diplomatic missions and it questioned the use of the word "consular" in article 1, para. 2. The essential point in that context was the existence of diplomatic relations. The Commission should also consider the inclusion of provisions governing the legal status of delegations and delegates to international conferences. For the position of delegations and delegates to conferences convened by States, in particular, was in many respects assimilable to, and even almost identical with, that of special missions and no draft on special missions would be complete without a reference to that subject.

9. He congratulated the European Office of the United Nations on its organization of the first Seminar on International Law and hoped that further seminars would be held in conjunction with future sessions of the Commission. He suggested that the United Nations might consider granting fellowships to cover travel and subsistence expenses of participants from developing countries and expressed appreciation of Israel's offer (840th meeting). He suggested, however, that participants in the seminars should be placed under the supervision of members of the Commission who came from the same geographical area or represented similar legal systems, and that they should assist the latter and be required to produce reports on the major issues discussed by the Commission.

10. Mr. PANUPONG (Thailand) said that the law of treaties was the most important chapter of international law. The treaty had at all times been the core of international law. Many authorities such as Kelsen and Anzilotti found the basic norm of international law summed up in the principle of pacta sunt servanda. In practice, treaties governed the greater part of inter-State relations; and in judicial decisions treaties were generally recognized as the major source of contemporary international law. The law of treaties was thus the principal law of international relations, the law upon which world order and peace largely depended. The draft articles on the law of treaties, therefore, should combine consideration for ideal solutions and applicability with the needs and realities of the world. Those qualities were indeed reflected in the Commission's texts. However, certain points of wording and substance should be re-examined to ensure that the final text stated the rules of international law correctly and precisely.

11. With regard to article 64 (see A/5809, chap. II, B), his delegation agreed with the statement in paragraph 1, but considered that the wording of paragraphs 2 and 3 provided an unnecessary and undesirable opportunity for the parties to resort to a severance of diplomatic relations as a political expedient to shirk their treaty obligations. That practice was not uncommon in some parts of the world. The words "the disappearance of the means necessary for the application of the treaty" in paragraph 2 and the words "the disappearance of such means" in paragraph 3 were open to subjective interpretation. Since the problem of supervening impossibility of performance had been adequately covered by articles 43 and 54, the two paragraphs could be deleted altogether. If it was desired to keep the text, however, both paragraphs should be rewritten in a more precise and restrictive manner.

12. In part III, section II (ibid.), the terms "modification" and "amendment" were used indiscriminately to designate transactions that might vary the treaty: the word "amend" was used in articles 65 and 66, while the word "modify" was used in articles 67 and 68. As a matter of principle, the same idea should not be expressed by different terms. If the two terms were intended to convey different meanings, they should be clearly defined.

[3] Official Records of the General Assembly, Sixth Session, Supplement No. 9, chap. IV.

13. Regarding article 68, to which his delegation attached special importance, he noted that, although it was not clear from the text of the draft article what the Commission meant by the expression "the operation of a treaty", the heading of the draft article and the commentary indicated that the draft article dealt with the modification of the treaty itself. It would appear from the text that with regard to the modification of a treaty the Commission seemed to equate the legal effect of a subsequent treaty with that of the subsequent practice of the parties and with that of a new rule of customary law. His delegation fully approved of the principle, stated in the commentary to draft article 68, that the modification of a treaty might be brought about by the common consent of the parties. It considered, however, that paragraph (a)—if the word "modification" were assumed to have the same meaning as the word "amendment", and the expression "modification of the operation of a treaty" to have no special meaning—merely repeated the substance of draft article 65 in different words. Paragraph (c) enunciated a well-established rule of international law, based on the maxim lex posterior derogat priori. There was, however, an overlap with article 45, in the case where the new rule of customary law was a rule of jus cogens. Paragraph (b) needed further consideration. The French and English texts did not correspond exactly: the French text made it clear that the treaty could be modified by subsequent practice only if the parties agreed to the modification, whereas the English text indicated simply that the operation of a treaty might also be modified "by subsequent practice of the parties ... establishing their agreement to an alteration ...". His delegation favoured the plain and clear meaning of the French text, and considered that the English text should be reworded to express the basic principle that modification required the common consent of the parties. The Ghanaian and Bolivian representatives had already emphasized that true consent was an indispensable principle of the law of treaties.

14. In its commentary on draft article 68, the Commission had indicated that the consent of the parties to the modification of a treaty might be "established" by, or in other words presumed from, their consistent practice, and had supported its opinion by reference to the case concerning the Temple of Phra Viharn.[4/] As a general rule, a revised or modified treaty was a new treaty, and since the foundation of the treaty obligation was consent, a treaty could be modified only by the consent of the parties thereto. No problem would arise where subsequent practice was the result of the true consent of the parties, but that was not always the case. Many difficulties could occur where there was no concordant view regarding the existence of the consent, its nature, scope and degree. If subsequent practice "establishing" the agreement of the parties was to be considered as a source of modification of a treaty, what was the criterion for establishing the agreement? What kind of conduct should be considered as implying consent? What was the actual length of time and the degree of consistency required to validate the establishment of consent? It was contended that the answer to those questions could be found in the circumstances surrounding each particular case. But if the legal value of subsequent practice depended on circumstances, how could it be accorded recognition as a rule of law?

15. A solution was sometimes sought in presumptions borrowed from the municipal law of certain countries, such as acquiescence (Qui tacet consentire videtur) and caveat emptor. But in the use of presumptions there was the danger of confusing a principle of one or more legal systems with a principle of international law, and the structure of the world community with the structure of a national society. A presumption could be applied only when certain recognized elements were shown to exist, and there was generally disagreement concerning what those elements were. Presumption could not be a source of modification of a treaty so long as its elements were not clearly defined.

16. His delegation did not consider the case concerning the Temple of Phra Viharn a correct example of modification of a treaty by subsequent practice. In that matter, which was a legacy of Western colonialism in South-East Asia and a result of the manœuvres of a colonial Power, there had never been common consent or common agreement to modify the treaties concerned. The International Court of Justice, basing its judgement on a series of presumptions and inferences, had held that the matter was one of interpretation of a treaty, and had not mentioned modification of the treaty. His delegation was not convinced by the Commission's explanation that the line might "sometimes be blurred between interpretation and amendment of a treaty through subsequent practice" (see A/5809, article 68, commentary, para. (2)). Interpretation was the act or result of determining the real meaning of what was not explicit in the treaty terms, whereas modification was the act of changing the rights or obligations of the parties.

17. With regard to draft article 69, his delegation believed that the first rule of interpretation should be that the terms of the treaty, if clear and precise, were the only guides to the intention of the parties. The text should be subject to interpretation only if it was ambiguous; as Vattel had written long ago, it was not permissible to interpret what had no need of interpretation. Subsequent practice, referred to in paragraph 3 (b), might provide evidence of facts but was not conclusive; it could not be automatically applied, but must be invoked by a party; and its probative value depended upon all the surrounding circumstances and must be weighed with all other relevant evidence. Subsequent practice might afford aid in the interpretation of ambiguous treaty provisions, but it should not be used to frustrate the natural meaning of the words or to extend the scope of the original terms.

18. Regarding the draft articles in part I (see A/6009, chap. II, B) his delegation at that stage would merely suggest that the Commission reconsider its use of the phrase "it appears from the circumstances" in article 4, para. 1 (b), article 11, paras. 1 (b) and 2 (a), and article 12, para. 1 (b), in view of the importance of the topics dealt with in those articles and the possibility that so compendious a phrase might easily lend itself to disagreement and dispute.

4/ Case concerning the Temple of Preah Vihear (Cambodia v. Thailand), Merits, Judgment of 15 June 1962: I.C.J. Reports 1962.

19. His remarks on the draft article on the law of treaties were, of course, preliminary and did not represent his Government's final comments.

20. His delegation would not comment on the draft articles on special missions, which were under consideration by his Government. The delegation of Thailand was fully satisfied with the Commission's decisions and suggestions concerning its programme of work and organization of future sessions, its co-operation with other bodies, the exchange and distribution of its documents, and the Seminar on International Law.

21. Mr. SIDKY (Afghanistan) said that world-wide political and social changes and the establishment of new nations, specially in Asia and Africa, made it essential that international law should be developed quickly so that right could be substituted for might. It was true that international problems had sometimes been solved politically, but history and experience had shown that that kind of solution was not always permanent. In order to establish and safeguard peace and to control the desire for power so often exhibited, humanity needed a universal system of law capable of settling international disputes through peaceful means and making possible peaceful coexistence between the different ideologies of the time. For those reasons the codification of international law was imperative.

22. The Afghan delegation considered that the work of the International Law Commission on the law of treaties and special missions represented an important example of international co-operation in the progressive development of international law. As far as the law of treaties was concerned, the Afghan delegation was in favour of the incorporation of all the draft articles of that law into a single convention. In that law, two principles were vital if it was to have permanent value: namely, justice and equality among the parties. Any treaty not based on those two principles must necessarily be of a temporary nature, and if the unfortunate events of international life were analysed it would immediately be recognized that the seeds of injustice and inequality were at the root of all of them. The ambition and exploitation of which colonialism had been guilty were the cause of the difficult situations existing in the world today, and with the awakening of the spirit of equality and justice among nations any one-sided treaty would now be faced with national opposition everywhere. The continued applicability of treaties in the event of a change of one of the parties was an important point not covered by the International Law Commission in its consideration of the law of treaties. Certain treaties, for example, came into force and continued as long as one party was stronger, but the powerful party might disappear leaving a third party to inherit the treaty without the consent of the original other partner. It would be desirable that the International Law Commission should thoroughly examine that matter.

23. As for special missions, which were becoming more and more frequent and important with the development of international relations, the Afghan delegation considered that there were only two types of international missions: i.e., those which were permanent and those which were temporary. In reality, special missions were a form of temporary mission, but the Afghan delegation preferred the term "temporary mission" to the term "special mission". "Temporary mission" covered all kinds of missions, including special missions, and the Afghan delegation did not consider it necessary to subdivide the term further, although it was essential to give a very clear definition of a temporary mission. The draft articles on special missions did not make it clear what privileges the members of such missions should receive in the countries to which they were sent. In the opinion of the Afghan delegation, the granting of unlimited privileges to them would produce difficulties.

24. The European Office of the United Nations was to be congratulated on organizing the Seminar on International Law. The Afghan delegation believed that that type of seminar could be very useful in the training of young officials and university students from developing countries, but such seminars should be organized on a permanent basis and not be dependent upon the sessions of the International Law Commission. Moreover, the kind of facilities provided by such seminars should be thrown open not only to young officials and students of the developing countries but also to similar persons from the trusteeship and non-self-governing territories. The Territory of Papua and New Guinea, for example, would soon achieve self-government and perhaps even independence, and it was highly desirable that young officials and students from such a territory should receive training in international law. While all praise was due to the organizers of the Seminar on International Law since no expense was caused to the United Nations, the importance of such seminars was so great that it would be well worth spending money on them if that was necessary in order to keep them in being. The cost of organizing such seminars might perhaps be reduced by organizing them on a regional basis. In the opinion of the Afghan delegation, the organization of seminars on international law in different parts of the world should come under the technical assistance programme of the United Nations for the teaching of international law, and voluntary help from universities and international jurists of Eastern, Western and non-aligned countries, as well as financial and other help from host countries, should be encouraged.

25. Although the amendments submitted by Ghana and Romania (A/C.6/L.560) to the draft resolution submitted by Lebanon and Mexico (A/C.6/L.559) were acceptable to the Afghan delegation, it wished to suggest that the words "Non-Self-Governing Territories and Trust Territories" should be added in the last line after "developing countries".

26. Finally, the Afghan delegation considered that a standard terminology of international law should be adopted for all laws, such as the law of treaties, law of special missions, and so forth, and it therefore suggested that the definition of such standard terms should be included in the preamble of those laws or else prepared as a separate legal document, so as to prevent misinterpretation of any terms used in treaties.

27. Mr. BHOI (Kenya) said that his delegation was deeply conscious that without the fulfilment of undertakings freely assumed by one State towards another,

there could be no good faith or co-operation between nations and no international progress. Without such good faith or co-operation there could not be any peace or peaceful coexistence either, so it could be stated dogmatically that the law of treaties was the basis of international co-operation and the surest pillar on which peace could be built.

28. It had been stated in the Committee that some of the developing countries of Africa and Asia had called into question some of the traditional basic rules of international law. To some extent that was true, and it was certainly not surprising, as many of the rules of international law had been developed by the more advanced and powerful States in order to protect their public and private interests in the colonial era. Even those rules had frequently been more honoured in the breach than in the observance by the colonialist Powers, however, which had never hesitated to apply a double standard in their respect.

29. In spite of all that, it was not true to say that the developing countries had ever denied the existence or the binding force of international law. On the contrary, the developing countries had all at various times invoked the rules of international law in the course of disputes with other States; they had wholeheartedly participated in conferences for the codification and development of international law, and had entered into many bilateral and multilateral treaties, thus extending the scope of application of international law. It was a matter of record that many developing countries had submitted disputes to the International Court of Justice. Thus, far from wanting to overthrow international law, the developing countries were interested in strengthening and developing it on the basis of universality, sovereign equality of States, and above all equity.

30. It was important to note that if there was a crisis in international law, that was not the fault of the developing countries, but was the result of scientific and technical progress, the obsolescence of certain parts of the law, and the creation of relatively new areas of law, such as the succession of States, where there were few agreed "traditional" rules.

31. The present age was one of constant change and development, and what had been good and valid yesterday might be out of date and deficient today. International law must therefore change into a dynamic force capable of meeting new challenges on a basis of universality and adapting itself to fit a new world order, and any rule suitable for universal acceptance must be developed with the participation and freely given consent of all States, and then applied impartially. That was why the Kenyan delegation firmly believed in the dynamic concept of international law in a rapidly changing world and considered that the progressive development and codification which was the International Law Commission's task under the terms of the Charter was the best way of securing the desired results.

32. A number of references had already been made in the Sixth Committee to the evils of unfair treaties signed by colonialist Powers with, or even over the heads of, helpless African countries, and East Africa could provide two prime examples. In 1921, when Tanganyika (now Tanzania) was a mandated territory, the United Kingdom had signed a treaty with Belgium granting the latter country harbour facilities and related concessions at Kigoma in perpetuity in return for a peppercorn rent of 1 franc per annum! Naturally, as soon as Tanganyika had gained its independence it terminated that treaty, for the United Kingdom had had no right to give away something which it was supposed to be holding in trust. Another interesting example of the cavalier treatment accorded to colonial countries by the colonialists was provided by the fact that the United Kingdom Government had tried to foist on Kenya, among the pre-independence treaties which it had tried to induce Kenya to accept "en masse" on its accession to independence, two treaties on peace and commerce, respectively, which Britain had signed with Denmark in 1660 and 1670—over two centuries before Kenya became a British colony. Happily, the Government of Kenya had decided to start independence with a clean slate, and had insisted on carefully reviewing all pre-independence treaties before deciding whether to retain them or not.

33. As far as specific points in the two reports of the International Law Commission (A/5809 and A/6009) before the Committee were concerned, the Kenyan delegation considered that, for the reasons given in paragraph 16 of document A/6009, the draft articles on the law of treaties should be united in a single convention which must, however, take account of the comments and observations submitted by Governments.

34. The Kenyan delegation noted with approval the steps taken by the Commission to develop its contacts with other international legal bodies. The Organization of African Unity had decided to set up a Commission of Jurists under article XIX of its charter, and it would be highly desirable for the International Law Commission to establish close contacts with that Commission and, when the financial situation of the United Nations improved, with other governmental and inter-governmental organizations of jurists throughout the world.

35. As far as the exchange and distribution of documents of the International Law Commission were concerned, the Kenyan delegation considered that such exchange and distribution was essential in order to give publicity to the Commission's work and promote wider knowledge and acceptance of international law throughout the world. As for the Seminar on International Law held in Geneva in 1965, the delegation of Kenya considered that such seminars should become a permanent feature of the work of the Commission, provided steps were taken, as advocated by the delegations of Ghana and Romania in their proposed amendments to the draft resolution submitted by Lebanon and Mexico, to ensure the participation of a reasonable number of nationals from developing countries. It might be desirable to deal with the question of the seminars under agenda item 89—Technical assistance to promote the teaching, study, dissemination and wider appreciation of international law, as such a procedure would have the merit of putting the matter on a regular basis, in one of the Committee's regularly recurring agenda items. Finally, the delegation of Kenya supported the Commission's proposal to hold an extraordinary

winter session in 1966 and possibly extend its regular summer session in that year.

36. As far as the individual articles of the drafts on the law of treaties submitted by the Commission were concerned, the Kenyan delegation considered that the definition of "Treaty" in article 1 (see A/6009, chap. II, B) was unsatisfactory because it did not cover treaties between States and international organizations. Such organizations frequently had the capacity to enter into treaties, and cases of their doing so were becoming more and more commonplace.

37. Although the principle of pacta sunt servanda stated in article 55 was self-evident, it fully deserved to be included in the draft, if only to emphasize that it constituted the corner-stone of the whole law of treaties.

38. The Kenyan delegation noted with approval the comprehensive and lucid wording of article 57 and its accompanying commentary. Article 63 on the application of treaties having incompatible provisions seemed quite adequate, but the test of incompatibility seemed to be a subjective one and should be modified to make it more judicial and objective. Article 67 on agreements to modify multilateral treaties between certain of the parties only was very useful, since it enabled States interested in maintaining their rights under an existing treaty to protect them adequately, and it also afforded a useful mechanism for parties contemplating a special treaty.

39. Although article 68 reflected to a large extent existing juridical opinion and State practice, the Kenyan delegation considered that its sub-paragraph (c) and the words "or by customary law" in its title should be deleted, as they involved considerations which were more a part of international law in general than of the law of treaties. Also, as in article 63, incompatibility of treaty provisions was mentioned without any indication of how such incompatibility was to be judicially and objectively appraised.

40. The delegation of Kenya considered that articles 69 to 71 on the interpretation of treaties represented a reasonable compromise of conflicting views, but as the essence of any treaty was the intention of the parties, the goal of any method of interpretation must always be to use all intrinsic and external aids to find out what that intention really was.

41. Finally, sub-paragraph 2 (b) of article 72 was unnecessary and should be deleted. As the Government of Kenya intended to submit its final views on the draft articles after careful study of them, all the foregoing remarks were of a provisional nature and were made without prejudice to the Kenyan Government's final views.

42. Mr. ROSENNE (Israel), recalling the suggestion he had made at the 840th meeting, asked the Legal Counsel whether the Secretariat would be in a position to prepare for the Committee at the twenty-first session of the General Assembly a reference guide to the articles on the law of treaties and a study of the procedural and organizational problems involved in a diplomatic conference held for the purpose of adopting a multilateral convention on the subject. The preparation of the second document would be without prejudice to the recommendations which the Commission might make when it had completed its work on the draft articles or to the decision which the Assembly might adopt when the Commission submitted its final report.

43. Mr. BAGUINIAN (Secretary of the Committee) said that the Secretariat would be glad to prepare the second paper requested by the representative of Israel after informal consultations with the members of the Commission. It would also prepare a reference guide showing the history of the various articles on the law of treaties, but could not be sure that it would be available for the twenty-first session of the General Assembly since the final draft would not be completed by the Commission until July 1966.

44. Mr. SINCLAIR (United Kingdom), exercising his right of reply, observed that the question of succession to treaty rights and obligations raised by the representative of Kenya with particular reference to certain treaties affecting Kenya and Tanganyika before they had attained their independence, had not been dealt with in the draft articles on the law of treaties; that matter was more pertinent to the problem of treaty succession than to the Commission's draft. The United Kingdom did not necessarily accept the Kenyan representative's account of the circumstances relating to the application to the territories concerned of those treaties concluded by the United Kingdom during the pre-independence period nor his interpretation of the principle they involved.

45. Mr. BHOI (Kenya) agreed that he had raised the question of treaty succession, but that his comments had been pertinent because it had been discussed in the context of the treaties concluded during the colonial era.

The meeting rose at 5.5 p.m.

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