AGENDA ITEM 88

Participation in the United Nations Conference on the Representation of States in Their Relations with International Organizations, to be held in 1975 *(continued) (A/C.6/L.980, L.982, L.983, L.985, L.986)**

34. The CHAIRMAN informed the Committee that the representative of Democratic Yemen had expressed his regret at having been unable to be present at the Committee's 1481st meeting. He wished it to be recorded that, had he been present he would have voted against the Israeli motion for division and in favour of draft resolution A/C.6/L.980.

* Resumed from the 1481st meeting.

The meeting rose at 12.15 p.m.

1489th meeting

Thursday, 31 October 1974, at 3.20 p.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1489

AGENDA ITEM 87

Report of the International Law Commission on the work of its twenty-sixth session *(continued)* (A/9610 and Add.1-3, A/9732, A/C.6/L.979)

1. Mr. KLAFKOWSKI (Poland) congratulated the Chairman of the International Law Commission on his masterly presentation of its report on the work of its twenty-sixth session (A/9610 and Add.1-3) and stressed the quality of the various draft articles set forth in the report. The codification of international law was becoming an increasingly complex and difficult task. The emergence of a large number of States had created a new climate in the political as well as in the diplomatic, economic, cultural and legal senses, so that the codification of international law must meet new needs and aspirations. The Commission had achieved major successes in that field due to its method of work. As Mr. Suy, Under-Secretary-General and Legal Counsel, had said, before the Commission at its 1265th meeting, "The success of the Commission's method of work" was "undoubtedly characterized by the continuous interaction of scientific expertise and governmental responsibility throughout the preparation of a codification draft. Such interaction required much time . . .".

2. So far 10 multilateral conventions had been concluded on the basis of drafts drawn up by the Commission. The report under consideration made a particularly important contribution to international law, since it set forth draft articles for three different conventions and gave a preliminary outline of principles for another set of draft articles.

3. It should be noted that the work of the Commission was only one stage in the process of codifying international law. The annual consideration of the Commission's report made it possible to assess its scientific work in the light of the realities of international life, represented by governmental delegations. The codification process was highly successful because of such multilateral diplomacy.

4. With reference to the statement by the representative of Iraq at the 1485th meeting he stressed the importance of the democratization of the international community, which was particularly noticeable in the codification of international law. The work of the Commission was affected by that democratization process, and influenced State practice, legal scholarship and the teaching of international law. It should be added that in its work the Commission benefited on a permanent basis from the valuable assistance of the Codification Division.

5. His delegation considered that the draft articles on succession of States in respect of treaties (*ibid.*, chap. II, sect. D) were concise, well-drafted and supplemented by excellent commentaries. His country was one of the 14 States Members of the United Nations which had already submitted written observations on the draft articles (see A/9610, annex I).

6. The Commission had so far adopted only a few articles on State responsibility, but they were the outcome of a remarkable work of synthesis and laid down fundamental rules based on international practice and jurisprudence. Since the subject of State responsibility was highly controversial, it was too early, at the current stage of the Commission's work, to make even preliminary observations.

7. Chapter IV of the report on the question of treaties concluded between States and international organizations or between two or more international organizations was impressive in its clarity, precision and simplicity. That question was of great importance for multilateral diplomacy. The six articles already adopted were the result of a major research effort.

8. He stressed the value of the report on the law of the non-navigational uses of international watercourses already drawn up by the Sub-Committee established to study that subject (see A/9610, chap. V, annex).

9. He recalled that his delegation had always been in favour of updating the Commission's long-term programme of work.

10. Mr. QUENTIN-BAXTER (New Zealand) said that his delegation did not intend to discuss in detail the draft

articles set forth in the Commission's report, so brilliantly presented by its Chairman. It preferred to give its views on the general principles underlying those drafts, the working methods of the Commission and the value of the drafts for the lawyers of the United Nations.

11. The succession of States in respect of treaties was a particularly difficult branch of the law of treaties. However, it was a field which had given rise to few disputes and one in which States respected each other's interests.

12. Like all the other Special Rapporteurs, Sir Humphrey Waldock had regarded himself as being at the service of the Commission, not in order to put forward his own ideas, but to take into account legal scholarship. Legal scholarship had taken rather a different turn from that of his draft articles. That was why O'Connell, the New Zealand author of a vast study of State practice in the field of succession to treaties, and the International Law Association were in favour of continuity of obligations. Sir Humphrey had first followed another course, one seldom found in Anglo-Saxon scholarship but the starting-point of which was a right recognized in the United Nations, the right of self-determination. Basing himself on State practice, and the practice of the Secretary-General of the United Nations as the depositary of international treaties and unilateral declarations by newly independent States as to their attitude towards the treaty obligations incurred by predecessor States, the Special Rapporteur had come to the conclusion that the "clean slate" principle took precedence over that of continuity. That starting-point was not e: , for lawyers in Oceania to accept, since they were used to regarding their countries as heirs to the rights and obligations of the United Kingdom and any other Power from which they originated. At the second reading of the draft articles, Tonga had called in question the relevance of the "clean slate" principle. His own country had often invoked old bilateral treaties concluded by the United Kingdom long before New Zealand's birth. It took time for a new State to conclude new treaties, and his Government knew by experience that a newly independent State should not be deprived of its place in international society from the moment it emerged. Tha' was why the principle of continuity should be taken into consideration, even in the case of new States. One member of the Commission, Mr. Tammes, had pointed out that the rule of continuity should be applied at least to universal law-making treaties. However, the majority of the Commission members had considered that the right of self-determination should be the key to the draft articles, and had pointed out that State practice in respect of treaty succession had never been uniform. Another member of the Commission, Mr. Ago, had recalled that the principle of continuity had not been applied at the time of the unification of Italy. That had also been true in the case of the dissolution of the Austro-Hungarian empire. States showed consideration for each other and attached some importance to the attitude of the newly independent State itself.

13. As the draft articles were considered by the Commission, the anxieties of some of its members had been allayed when they had realized that the Special Rapporteur took sufficient account of the interests of newly independent States. In particular, the draft articles of 1972[1] enunciated in part III, section 2, the principle according to which a newly independent State had the right to become a party to a general multilateral treaty without the consent of the other parties to that treaty. A procedure was laid down whereby the newly independent State could indicate first in a preliminary way and later in a definitive way that it chose to succeed to the rights and obligations of the predecessor State.

14. The desire to give special preference to newly independent States was accompanied by a concern for third States. International practice, which was not uniform, seemed to suggest that in the case of a bilateral treaty or a limited multilateral treaty, the rights and obligations only passed to the successor State with the consent of both parties to the treaty.

15. The Commission had then taken into account the position of States other than newly independent States. It had recognized that in the case of the formation or dissolution of a union of States, it was desirable and in accordance with State practice that treaty rights and obligations should be maintained; it had also recognized that in some cases of the disruption of a State, where the part that had broken away did not regard itself bound by the agreements concluded by the predecessor State, the "clean slate" principle should be applied. That was when Sir Francis Vallat had replaced Sir Humphrey Waldock as the Special Rapporteur, and he too had effaced his own opinions in favour of the general view. In turn, Sir Francis had accorded some importance to the principle of continuity, and had drawn up the draft articles in consequence. His draft articles retained in essence all that had been proposed concerning newly independent States in the earlier draft; however, Sir Francis had elaborated on the part dealing with cases of succession not involving newly independent States. He had dealt in greater detail with cases of the formation and dissolution of unions of States and had provided for the case where a part of an independent State separating from it might regard itself as not being a successor to that State.

16. That glimpse of the Commission's work demonstrated clearly its working method. The time was gone when in every field of knowledge world opinion would crystallize around the views of a given theoretician, as was the case in international law for the theories of Grotius. The system of the Special Rapporteur, who was responsible only to the Commission and the General Assembly, was more complex. The Special Rapporteur did not work alone; he took into account the views, criticisms and questions of his colleagues and the members of the Committee as well as the commentaries of Governments. Such collegiality and sharing of responsibilities did not prevent the Rapporteur from taking initiatives. Moreover, the system of special rapporteurs, who were not responsible to their own Governments and whose work was, in the first instance, criticized by their colleagues, who also did not receive instructions from their Governments, was perhaps peculiar to the fellowship of the law. It was not found in other United Nations bodies, but it had some definite advantages. Since

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1 See *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 10*, chap. II, sect. C.

they were independent, the members of the Commission could work in an atmosphere of impartiality and loyalty which was certainly a positive factor in the development of international relations.

17. At its preceding session, the Commission had also continued its study of the question of State responsibility and had added three articles to the draft being prepared (*ibid.*, chap. III, sect. B). That subject related to the philosophy of law and required a re-examination of certain basic principles which had been taken for granted. The Commission had therefore not adopted the conventional approach of determining State responsibility on the basis of the rights of aliens.

18. Under the guidance of Mr. Ago, who, like other special rapporteurs, had been assisted by a small but skilled secretariat, the Commission had adopted three articles on State responsibility after studying the concepts on which responsibility was based. Those articles were thus only one part of a much broader work, which could not be judged until it had been completed. Lawyers from different backgrounds, disciplines and systems of law would attach varying degrees of importance to each part of the draft. Thus lawyers trained in civil law would tend to see in the first of the three articles submitted the major rule and, in the others, additional rules covering exceptional circumstances. Others, trained in common law, would attach more importance to other concepts. Such differences should not, however, cause concern at the current stage in the preparation of the draft.

19. The Commission had also made some progress on the question of treaties concluded between States and international organizations or between two or more international organizations. At its twenty-sixth session, the Commission had dealt only with preliminary rules and therefore still had to consider the substance of the question, but his delegation considered that the topic was in the very best of hands because the Special Rapporteur, Mr. Reuter, had a knowledge of the law of international organizations which was unrivalled, was guided by international opinion, took into account the views of Governments and made his experience available to them. Governments had a considerable stake in that task of codification. To justify itself, the law must always meet two standards: it must take account of the wishes of States and of those of specialists throughout the world who established objective rules. That goal was far from being achieved, but it was one to which all aspired.

20. With regard to the Commission's methods of work, the Commission's arguments and the comments of the Chairman of the Joint Inspection Unit (see A/9795) should be seen in a broader context. His delegation was of the opinion that the Commission was not claiming any special privileges or any kind of treatment not based on a very modest assessment of its own needs so that it might carry out its duties to the General Assembly. During a 12-week session, the Commission had prepared a very large report, completed its work on the law relating to succession of States in respect of treaties and had made progress in its work on two other topics. It was therefore reasonable to conclude that, unless it could continue in that way, it would not be able to meet the General Assembly's requirements. The speed with which the Commission carried out its work did not depend on the number of its plenary meetings, which often had to be interrupted so that a drafting committee could meet and, sometimes, the drafting committee had to space its meetings so that the Secretariat could have time to do the necessary work. One of the many advantages the Commission enjoyed was that, in addition to the services of the New York Secretariat, continuous translation, interpretation and other services were available to it in Geneva. It was quite remarkable that, at a time when the demand for language services was such that it could not be met, the Commission still had the services of people whose language skills were matched by their knowledge and understanding of legal terminology and of the law itself. In addition to those advantages, the services provided by the library in the Palais des Nations were of great assistance.

21. The Commission achieved its objectives and fulfilled its tasks because of its members' esprit de corps and confidence in one another and because they were aware of their responsibilities and knew that they could not allow their standards to become debased. Since the Commission was composed of persons appointed on an individual basis, some of its members had professions which left them little freedom or held positions of such great responsibility in their own Governments that no one could replace them in their absence. If the Commission were requested to hold sessions of 12 weeks rather than 10, that would not mean that all its members would attend all the meetings during those 12 weeks, but, rather, that it would be able to proceed with its work at the same speed as at present and that the quality of its output would not be affected. If all those factors had been made clear, there would have been no conflict with the Joint Inspection Unit.

22. The methods adopted by the Commission were justified because it had in some ways the characteristics of an extremely well-organized voluntary institution where unpaid work was often done. His delegation did not consider that any change in the Commission's working conditions would be of benefit to the United Nations, and hoped that the Committee would request the General Assembly to encourage the Commission to continue its work in accordance with its usual methods.

23. Mr. HAGARD (Sweden) said that his delegation, too, greatly appreciated the outstanding work done by the Commission during its first 25 years of existence.

24. The report submitted to the Committee was devoted mainly to the question of succession of States in respect of treaties. The Commission had now prepared a final draft of 39 articles on that topic and, in view of the difficulty of its task, his delegation could easily understand that the Commission had not been able to respond to the initiative of the Swedish Government, which had suggested in the antepenultimate paragraph of its observations on the draft articles (see A/9610, annex I) that an alternative model should be prepared. In that connexion, he wished to stress that his country fully accepted the right of any newly independent State to decide in full sovereignty whether or not it wished to be bound by treaties concluded before its independence. There were several technical means of arriving at that result and his delegation was prepared to accept any solution which received the support of a vast majority of States. The report of the Commission showed,

however, that some members had expressed some concern about the effects of the "clean slate" principle in the case of humanitarian conventions and other multilateral treaties of universal character. Some members had even proposed that the Commission should apply to such treaties the system of *de jure* continuity combined with a right of denunciation. His delegation considered that that proposal, which the Commission had not been able to discuss because of the lack of time, should be given further study. Moreover, in view of the particular importance and complexity of the question of succession of States in respect of treaties, his delegation considered that Governments should be allowed ample time to study the articles and submit their observations, as recommended by the Commission in its report.

25. One general feature of the draft must be stressed. In practice, the application of the provisions of the draft would probably give rise to conflicting interpretations by the parties concerned. He noted, for example, that the rules applicable to newly independent States depended on whether the new State acquired independence or was created as a result of the separation of one or several parts of a State. A newly independent State was thus a State which had been a dependent territory before succession. The draft articles did not, however, contain a definition of the concept of a dependent territory and it might therefore be asked what legal criteria distinguished a dependent territory from a part of a State. The matter was further complicated by the fact that the draft also referred in article 33 to an intermediate category, namely "a part of the territory of a State" which "separates from it and becomes a State in circumstances which are essentially of the same character as those existing in the case of the formation of a newly independent State".

26. Another example of a basic provision open to different interpretations was draft article 16, paragraph 1 of which contained a general rule which paragraphs 2 and 3 limited by exceptions giving legal effect to circumstances difficult to determine in any definite way. There was no doubt that the structure of the draft articles justified and even required the inclusion of provisions of that kind, but his delegation wished to stress that their interpretation might give rise to disputes between the parties concerned. It therefore seemed highly advisable to establish an effective procedure for the settlement of disputes arising from the application of the articles. The Commission was, moreover, aware that such a procedure might be needed and had offered, if such was the wish of the General Assembly, to consider the question at its twenty-seventh session and prepare a report on the subject. His delegation felt that that offer should be accepted and that the relevant instructions should be given to the Commission.

27. Those observations showed that it would be premature for the General Assembly to take a decision at the current session on the question of convening a diplomatic conference on the question of succession of States in respect of treaties.

28. Besides preparing the final draft on succession of States in respect of treaties, the Commission had been able to advance its work on several other subjects on its agenda. In particular, it had added a number of new articles to its draft on State responsibility. The Swedish delegation was gratified that the Commission intended to deal with that extremely important subject as a matter of priority at its twenty-seventh session. It also took note of the interesting report submitted by the Sub-Committee on the Law of the Non-Navigational Uses of International Watercourses and trusted that his Government would have the opportunity at a later date to comment on the substance of the questions dealt with in that report.

29. During its 25 years of existence, the Commission had developed methods of work which were undoubtedly satisfactory, as was shown by the success of its work. It was essential therefore that the ILC should enjoy considerable freedom in organizing its work. It would be regrettable if administrative measures were taken which, in the judgement of the Commission, would seriously impair its conditions of work. Even if it should cause some inconvenience to the over-all planning of United Nations conferences, the Commission ought to be provided with the facilities which experience had shown to be productive.

30. Mr. KOLESNIK (Union of Soviet Socialist Republics) observed that the Commission had concentrated on three questions, namely, succession of States in respect of treaties, State responsibility, and the question of treaties between States and international organizations or between two or more international organizations. In paragraph 84 of its report, the Commission recommended that the General Assembly should invite Member States to submit their written comments and observations on the Commission's final draft articles on succession of States in respect of treaties and convene an international conference of plenipotentiaries to study the draft articles and to conclude a convention on the subject. Such optimism was premature, since the draft articles were not yet ready to be taken as a working basis for a conference. However, the provisions of the draft were of considerable theoretical and also practical importance, since it seemed to be agreed that they reflected current international rules. Two questions were particularly important: boundary treaties and the "clean slate" principle.

31. Draft article 11 provided that a succession of States did not affect a boundary established by a treaty or obligations and rights established by a treaty and relating to the régime of a boundary. Boundary treaties established an objective régime which confirmed a *de jure* and *de facto* situation of great importance for the maintenance of peace and international security. The newly independent State inherited the situation, not the boundary treaty. Article 11 therefore reflected a strongly entrenched rule. However, the relationship between article 11 and articles 6, 7 and 13 was not clearly defined. Articles 6, 7 and 13 should be drafted in such a way as to avoid any ambiguity or any interpretation which might detract from the provisions of article 11. While the basic concept of article 6 was not open to doubt, his delegation was not satisfied with its wording. Article 7 corresponded to the law in force, and in that connexion he called to mind the historic period linked to the creation of some 10 independent States in Asia and Africa as a result of decolonization. He questioned whether article 13 should be retained, since questions relating to the validity of a treaty were the concern of the Vienna Convention on the Law of Treaties.

32. He recalled that at the previous meeting the representative of Mongolia had made an excellent analysis of the "clean slate" principle. Draft article 15 provided that a newly independent State was not bound to maintain a treaty in force, with the exception of boundary treaties. That thesis was not satisfactory because it did not distinguish between unjust treaties concluded in the framework of a colonial situation and contemporary treaties concluded between States with different social systems and based on the principle of peaceful coexistence. Furthermore, it did not take into account multilateral treaties regarding international peace and security and co-operation on a non-discriminatory basis. The evolution of international law had thus been ignored. Currently, many principles of contemporary international law were of a democratic nature; but the "clean slate" principle, as reflected in the draft, politically and theoretically weakened the role of international law and its influence on international relations. Instead of contributing to the progressive development of international law, the draft strengthened the tendency to limit treaty relations and ran counter to the development of international relations.

33. He pointed out that his delegation's attitude should not be construed as opposition to the "clean slate" principle, but only to the formulation of that principle in the draft. His delegation supported the "clean slate" principle inasmuch as it was based on the freedom of newly independent States to maintain a treaty in force or not. All treaties should not automatically lapse for a newly independent State, since treaties created not only obligations but also rights which might turn out to be indispensable. It would therefore be appropriate to adopt a different viewpoint in cases of unjust treaties and in cases of treaties which conformed to the Charter.

34. The "clean slate" principle and the question of the invalidity of unjust treaties were closely related to the legal consequences of social revolution. His delegation regretted that the authors of the draft articles had not concerned themselves with the problems raised in the case of social revolution, and it could not accept the argument contained in paragraph 66 of the report, which rejected the distinction between social revolution and coup d'état. If the Special Rapporteur and the Commission had analysed the experience of the social revolution of October 1917 and that of other countries, they would undoubtedly have reached a different conclusion. He remarked that the draft articles contained other lacunae and inadequacies, and could not therefore be submitted in its present state to a conference convened for the purpose of concluding a convention. The text of the draft would have to be submitted to States for their observations, and the Commission should re-examine it in the light of the comments made by Governments and by the Sixth Committee and of the proposals concerning multilateral treaties of universal character and methods for settlement of disputes concerning the provisions of the future convention.

35. With regard to the question of State responsibility, he considered that little and hesitant progress had been made in that field by the Commission, whereas according to General Assembly resolution 3071 (XXVIII) the Commission should have continued on a priority basis at its twenty-sixth session its work on State responsibility. It was odd that the Commission, in over 20 years of existence, had been able to study only nine articles, concerning general principles and purely theoretical questions, and had ignored the problems which were at the heart of the question. State responsibility for acts of aggression and international crimes was of great importance, and he expressed the hope that the Commission would give the problem all due attention.

36. His delegation wished to point out that the work of the Commission was not keeping pace with the evolution of the international situation. It should therefore speed up its work of codification. He stressed that the problem of increasing the efficiency of the Commission's work was a point on which the Joint Inspection Unit shared the opinions of his delegation, which could not approve the Commission's recommendation to the General Assembly concerning 12 week sessions, contained in paragraph 165 of its report.

37. The criticism made by his delegation did not mean that it underestimated the role of the Commission with regard to the codification and progressive development of international law, and he had deliberately not mentioned the achievements of the Commission: to do so would require giving due credit to its work regarding questions such as the law of the sea, diplomatic immunity and protection of diplomatic agents. It was on the basis of drafts prepared on those questions by the Commission that it had been possible to adopt conventions. Quoting the words of Aristotle, "Plato is my friend, but truth is dearer to me", he said that, subject to the observations he had made, his delegation would not oppose adopting the report.

38. Mr. MILLER (Canada) stressed the vital role played successively by Sir Humphrey Waldock and Sir Francis Vallat as Special Rapporteurs in the preparation of the draft articles on succession of States in respect of treaties.

39. The Commission had rightly given due attention throughout its study of the question to the practice of newly independent States, as recommended by the General Assembly. His delegation, however, had some doubt whether enough weight had been given, in the introductory portion of the report on that topic, to the many instances in which, without controversy, new States had continued to apply the treaties entered into by their predecessors. The report in paragraph 58 referred to the traditional "clean slate" principle as the underlying norm for cases of newly independent States or for cases that might be assimilated to them; and it went on to say in the following paragraph that the "clean slate" metaphor was merely a convenient and succinct way of referring to a newly independent State's general freedom from obligation in respect of its predecessor's treaties. The impression was thus conveyed that that represented evidence of State practice. As some Governments had noted in their observations on the draft articles, it was questionable whether a study of State practice led irresistibly to the "clean slate" conclusion. In many cases State practice in connexion with devolution agreements and with unilateral declarations appeared to demonstrate a presumption of continuity. That had been argued by some distinguished writers who saw in the high rate of treaty

succession during the decolonization era of the recent past and present substantial evidence of the continuity of rights and obligations. There were also some cases where the practice of newly independent States had been ambiguous. It therefore seemed somewhat misleading to speak of the "clean slate" theory as though it were derived from a study of State practice and amounted to a codification of existing law.

40. His delegation supported the general approach taken in part III of the draft, regarding newly independent States. In article 15 the so-called "clean slate" rule was not framed as a presumption against succession but simply as a denial of automatic succession. A newly independent State was not bound to maintain in force, or to become a party to, any treaty by reason only of the fact that at the date of succession of the State the treaty applied to its territory. The option thus given to a newly independent State was without prejudice to the rights and obligations of the other States concerned as set forth in the relevant provisions of the articles. Those articles provided a balance between the protection of the interests of the new State and those of any interested State with regard to the so-called localized, territorial or depositary treaties dealt with in articles 11 and 12. The approach taken by the Commission corresponded to the practice of the Secretary-General as depositary, as noted in paragraph (9) of the commentary to article 15. In general, the articles appeared to make as flexible as possible the position of a new State which wished to continue to participate in a treaty.

41. With regard to the form of the draft, his delegation noted with interest the Commission's proposal, in paragraph 84 of the report, to the effect that after Member States had submitted their written comments and observations on the draft articles, an international conference should be convened to conclude a convention on the subject. Nevertheless, his delegation was not convinced that a convention would be the best type of instrument for advancing international law on the subject. First of all, as the Commission had pointed out, new States could only become parties to such a convention after they had acquired statehood. Secondly, it was unlikely a large number of further new States would emerge, so that to some extent such a convention might not be necessary. Thus his delegation was not persuaded that an early conference was necessarily the most desirable course to follow. An interval of three to five years could have certain advantages: it would allow for a thorough study to be made by scholars and Governments of all implications of the draft articles; the General Assembly could ask the Secretary-General to prepare a report on his depositary practice and experience in light of the Commission's draft articles, including the feasibility of greater precision and promptness in the dissemination of treaty information by depositaries; it might permit the Commission to study the question of the succession of Governments to treaties which were likely to be a recurring problem in the future; and it might allow a consensus to develop on whether the topic, as an ancillary to the law of treaties, should or should not be codified as a convention. It might be that a declaratory statement of principles formulated by the Sixth Committee would be just as effective as a guide to States. Should the topic be codified as a convention, provision for settlement of disputes would be desirable. Canada favoured procedures which would be compulsory rather than merely optional and would support a conciliation procedure followed, if unsuccessful, by compulsory recourse to either the International Court of Justice or to arbitration, with a decision to be binding on the parties.

42. The question of succession of Governments was a matter of obvious significance and one which in many respects could be the source of more problems than the succession of States. The present time was the twilight of the colonialist era and the succession of States would progressively diminish in importance, whereas the same could not be said of the question of the succession of Governments. Although the Commission had given priority to succession of States, his delegation recalled that the topic had originally been entitled "Succession of States and Governments". In 1963, the Commission approved the recommendation of the Sub-Committee on the Succession of States and Governments that the Special Rapporteur should study succession of Governments only to the extent necessary to complement the study of State succession. Although the General Assembly in resolution 1902 (XVIII) had endorsed that decision, the question that might be asked was whether it might not be preferable to consider the codification of the entire question of succession with respect to treaties, including both the succession of States and the succession of Governments. His delegation suggested that such a possibility should be considered.

43. His delegation welcomed the progress made by the Commission in its study of the delicate question of State responsibility. The Canadian Government took a keen interest in the development of that particular branch of international law, which was of vital importance to the harmonious conduct of inter-State relations.

44. His delegation also wished to endorse the preliminary work of the Commission on the question of the non-navigational uses of international watercourses. That too was a subject of great importance to the world community and one in which Canada was particularly interested. His delegation also hoped that the Commission would be able to complete its work on the most-favoured-nation clause in the near future.

45. The Canadian Government was aware of the broad scope of the work done by the Commission and therefore had reservations regarding the observations of the Joint Inspection Unit contained in the Unit's report on the pattern of conferences of the United Nations (see A/9795). His Government had consistently supported initiatives to rationalize the workings of the United Nations and its subsidiary bodies whenever it felt such initiatives would render those institutions more efficient. It felt, however, that the Commission represented a special case. The Commission was a unique body, whose members served in their personal capacity, and was not comparable to other international institutions composed of governmental representatives. For that reason, his delegation believed that

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2 *Ibid., Eighteenth Session, Supplement No. 9*, annex II, para. 9.

the Commission should be given every consideration in terms of adequate facilities and sufficient time to enable it to discharge the important and urgent task assigned to it by the General Assembly. Therefore, if the Commission considered it desirable to extend its next session from 10 to 12 weeks, the Canadian delegation was prepared to support that recommendation.

46. The quality and importance of the work done by the Commission throughout the 25 years of its existence were worthy of recognition. The Commission had been quite right in refusing to make any categorical distinction between the two aspects of the task assigned to it. Codification, of necessity, involved the development of new laws, even if only in terms of filling the "gaps", and conversely, progressive development did not take place in a vacuum, but rather drew upon existing legal resources, at least in its initial stages. The scope of international law had expanded considerably since the Commission had opened its first session in 1949. The Commission had proved flexible enough to adjust to such new developments as the elaboration of the law relating to outer space and the environment, while at the same time maintaining the continuity of the carefully considered inquiries over the long term. The measure of autonomy it enjoyed contributed significantly to the effective results it produced. The role of the Commission was likely to be of ever increasing importance in the future, and he had no doubt that the next 25 years would see it make an equal contribution to the formulation of international law, which was the concrete manifestation of co-operation among States in the various spheres of international life.

AGENDA ITEM 86

Report of the Special Committee on the Question of Defining Aggression *(continued)* (A/9619 and Corr.1, A/C.6/L.988, L.990)

47. Mr. KASHAMA (Zaire) welcomed the delegations of Guinea-Bissau and Grenada.

48. In introducing working paper A/C.6/L.990, he said it was unfortunate that the Special Committee on the Question of Defining Aggression should have decided to limit the scope of its draft definition (see A/9619 and Corr.1, para. 22) to armed aggression. That attitude could, of course, be explained by the historical circumstances behind the creation of the Committee; it would, however, have been desirable to consider the problems posed by other forms of aggression, such as economic aggression. His delegation realized that the provisions of article 4 of the draft definition provided a reference to the powers of the Security Council in the event it might determine the existence of other acts of aggression, but it could not help being sceptical about the effects of the veto power enjoyed by the great Powers.

49. His delegation therefore proposed that the Sixth Committee should apply the adage *"qui peut le plus peut le moins"*, and approve working paper A/C.6/L.990. He asked that the views of his delegation should be reflected in the report of the Sixth Committee to the General Assembly.

The meeting rose at 5.45 p.m.

1490th meeting

Friday, 1 November 1974, at 3.30 p.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1490

AGENDA ITEM 87

Report of the International Law Commission on the work of its twenty-sixth session *(continued)* (A/9610 and Add.1-3, A/9732, A/C.6/L.979)

1. Mr. VILLAGRAN KRAMER (Guatemala) said that the International Law Commission's report (A/9610 and Add.1-3) showed the complexity of the codification of international law in a changing world beset by conflicts. Those two factors perhaps explained why it was difficult to reflect in a legal instrument situations which were affected or even to a large extent created by economic or political factors. His Government tried each year to define legal norms which were useful in its relations with other States and international organizations.

2. There was no doubt that the Commission encountered problems in the course of its work. While codifying some rules of international law, it must take into account changes which States sought to introduce into the international legal order. It had been said, not without reason, that the development of international law required the participation of the developing countries; currently, their contribution was making itself felt in an increasingly active and dynamic way, and the practical results were evident.

3. The succession of States in respect of treaties and State responsibility were matters of great interest for countries which wished to define legal rules in those areas, taking into account the decolonization process which had begun in the 1950s. But it might be said that the other items on the Commission's agenda were just as important, if not more so.

4. With reference to the succession of States in respect of treaties, the Commission had pursued its study on two points which were closely related in so far as there was a legal bond between a territory and an international treaty. Therefore, that question covered both the succession of