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Chairman: Mr. K. Krishna RAO (India).

AGENDA ITEM 84

Report of the International Law Commission on the work of its twentieth session (continued) (A/7209 and Corr.2; A/C.6/L.647)

1. Mr. SHARDYKO (Byelorussian Soviet Socialist Republic) expressed his satisfaction that, at its twentieth session, the International Law Commission had intensified its work, continuing to discharge the difficult but essential task entrusted to it — the codification of contemporary diplomatic law. In view of the development of international relations, particularly between States and international organizations, and also the necessity of ensuring world peace and security, that task was bound to take on even greater importance.

2. The twenty-one draft articles on representatives of States to international organizations prepared by the Commission took due account of those considerations. By arduous work, the Commission had succeeded in formulating the principles which should govern diplomatic relations and, in particular, relations between States and international organizations. It should be noted that the Commission had adopted the draft unanimously. While that did not necessarily mean, of course, that all its members found the draft wholly satisfactory, it did mean that the Commission had been able to overcome the differences of opinion, in a spirit of co-operation and mutual understanding, so as to prepare a draft which took account of the interests of all States and international organizations. His delegation also welcomed the Commission's decision to complete at its twenty-first session its consideration of its drafts on relations between States and international organizations.

3. The question of the succession of States and Governments was of particular importance for young States which had thrown off the colonial yoke and for peoples that were still struggling for their independence. His delegation was therefore glad that the Commission, in conformity with General Assembly resolution 1686 (XVI), had decided to include that question in its programme with a view to its early consideration.

4. With regard to the organization of future work and the Commission's methods of work, he doubted whether

a winter session at the beginning of 1970 would serve a useful purpose, as the Commission should avoid excessive haste in considering the important questions still before it. His delegation also believed that it would be difficult for the General Assembly to take a decision at the present session on the proposal for the extension of the term of office of the Commission's members and that that decision should be deferred to a future session.

5. Mr. REUTERSWARD (Sweden) said that, as the draft articles on representatives of States to international organizations were to be transmitted to Governments for their observations, his delegation would not comment on them at the present time.

6. At its twentieth session, the International Law Commission had made considerable headway in the matter of succession of States and Governments. His delegation believed that the Commission should concentrate its attention on the problems of succession in respect of treaties and in economic and financial matters and should leave aside, for the time being, succession in membership of international organizations. It would also seem desirable that the approach to the problems of succession should be a broad one. It was true that the process of decolonization had produced many practical problems in the matter of succession, not only for the new States but for all other States as well; however, that process would soon be completed and, although it would continue for some time to give rise to problems, it might well be necessary to deal in the future with other problems arising from other situations. Accordingly, his delegation considered that if long-term solutions were to be found for the codification and the progressive development of the international law of succession, the approach should not be confined to succession resulting from decolonization.

7. It was also desirable that any rules drafted to deal with succession should contain explicit provisions on the judicial settlement of disputes. It was true that such settlements might be regarded as a general problem in international law, but as progress in solving that general problem had been very slow it would seem important to achieve progress within limited areas. His delegation believed that the new rules formulated by the International Law Commission and accepted by all Members of the United Nations should be subject to the control of a judicial body. While the application of simple rules of customary international law might reasonably be left to the States, the application of a complex modern system of codified rules would require suitable machinery for the settlement of disputes.

8. In the matter of the Commission's methods of work, on the whole his delegation supported the views that the Commission had expressed in its report; accordingly, it would be prepared to accept an extension of the terms of office of the Commission's members if it had general support in the Sixth Committee. Likewise, it was prepared to give favourable consideration to proposals for a more adequate remuneration of the members of the Commission, for it believed that the services of those members, who were among the most highly qualified international jurists in the world, should not only be well used but also properly remunerated.

9. The Commission's decision to ask the Secretary-General to prepare a new survey of international law along the lines of the 1949 survey^{1/} was a wise move, as the new survey should be of assistance for the Commission's long-term planning.

10. With regard to the Secretariat's strength, he merely wished to point out that the more that could be done by the Secretariat the more the work of the Commission would be facilitated and the codification process accelerated.

11. Lastly, his delegation would defer its comments on the memorandum entitled "The Final Stage of the Codification of International Law"^{2/} until it was able to study the document on the problem of the accession of States to universal conventions which the United Nations Institute for Training and Research (UNITAR) was preparing.^{3/}

12. Mr. HOUBEN (Netherlands) drew attention to the importance of the close relationship between the International Law Commission and the Sixth Committee; there was an interaction between those two bodies, like that between the sun and the earth, which left the influence of each undiminished. The distinguished jurists composing the International Law Commission had given vital energy to the codification process and developed, in a most lucid manner, international law through the restatement of existing rules and through the formulation of new ones as well; the Sixth Committee continued to perform a down-to-earth, policy-oriented function in bringing about whatever action a majority of Governments considered appropriate in the light of the Commission's final drafts and recommendations.

13. He paid a tribute to the Commission for the contribution it had made to the development of international law in the course of the twenty sessions held so far. The work it had accomplished during the past two decades was of the greatest importance. He wished to refer in particular to the draft articles on the law of the sea, diplomatic relations, reduction of statelessness, consular relations, the law of treaties and special missions. In all those fields, multilateral conventions had been or were about to be concluded under the auspices of the United Nations.

^{1/} Survey of International Law in Relation to the Work of Codification of the International Law Commission (United Nations publication, Sales No.: 48.V.1(1)).

^{2/} A/CN.4/205/Rev.1.

^{3/} For details of this UNITAR project, see Official Records of the General Assembly, Twenty-second Session, Annexes, agenda item 45, document A/6875, annex I, paras. 59-69.

14. His delegation had noted that at its twentieth session the Commission had begun the consideration of new items such as the succession of States and Governments and relations between States and international organizations and it was also gratified to note that it had adopted a preliminary draft of the twenty-one articles on the legal position of representatives of States to international organizations. Likewise, it had noted that the Commission intended further to consider parts III and IV of the drafts submitted by the Special Rapporteur concerning "delegations to organs of international organizations and to conferences convened by international organizations" and "permanent observers from non-member States to international organizations". It was looking forward with interest to a decision by the Commission on those subjects. Accordingly, it would seem premature to consider extending the scope of the draft convention on special missions to "delegations to sessions of organs of international organizations and to conferences convened by international organizations".

15. Turning to the question of the succession of States and Governments and, in particular, to that of rights and duties resulting from sources other than treaties, he noted that the Commission had concluded that "the problem of new States should be given special attention throughout the study of the topic, without, however, neglecting other causes of succession on that account" (para. 61 of the report). His delegation, while it hoped that special attention would indeed be given to the important problems arising in connexion with new States, was confident that that would not prevent the Commission from establishing general rules suited to all categories of State succession.

16. There was no doubt that certain characteristics were peculiar to the phenomenon of State succession resulting from decolonization. Where that was the case, the new State had as a rule been faced, within its territory, with a range of foreign interests considerably wider than that found in older States. A significant portion of those interests, namely those held by subjects of the former administering Power, became "foreign" as a direct consequence of decolonization. Prior to the termination of the decolonization process, those interests were not in any way protected by international law. While new States were thus confronted by an existing situation within their territory, older States had usually been in a position to prevent — and indeed had prevented — the prevalence of foreign economic influence within their territory at the proper time. Because of that fact and various other circumstances, the succession of new States could not be treated on a par with all other causes of State succession. However, the question to what extent particular rules should apply to new States could be answered only on the basis of the content of relevant general rules. The first step must be to study the general rules, which could then be adapted to the specific problems posed by decolonization. His delegation therefore shared the view expressed in paragraph 68 of the report that "the best method would be to identify the specific problems raised for new States by a given general rule and subsequently to formulate, when necessary, a special rule for decolonization or any other type of State succession requiring it".

17. With regard to the proposal made by Mr. Ago in his memorandum^{4/} concerning the desirability of expediting the process of ratification of or accession to codification conventions in order to shorten the final stage of the codification of international law, he agreed with the other representatives who had stated that the methods employed for that purpose should not be intended to force a political decision on individual nations. That would not, however, be the effect of Mr. Ago's suggestion concerning the adoption of a recommendation by the General Assembly or the signing of an additional protocol to any convention adopted by a diplomatic codification conference. It would be left to each State to decide whether or not it would bind itself to submitting the convention to its constitutional authorities within a given time or, alternatively, to sending a report to the Secretary-General of the United Nations. Since the question was extremely important to the cause of strengthening the rule of law in the international community, his delegation was confident that the Commission, when reviewing its programme of work at its next session, would not fail to list the item as a topic for further study, taking as its starting point the view expressed by Mr. Ago that "in most cases the reasons why a State delays transmission of the instrument formally establishing its consent have nothing to do with any real opposition, either on principle or on a particular point. The reasons are mainly inherent in the inertia of the political and administrative machinery of the modern State".

18. Turning to some of the points raised by the Commission in chapter V of its report (paras. 98 (a), 103 and 98 (c)), he stated his delegation's position on the question of extending the term of office of the Commission's members, the organization of future work and the question of increasing the staff of the Codification Division of the Office of Legal Affairs.

19. With regard to the first of those questions, he pointed out that article 10 of the Commission's Statute had originally provided for a three-year term of office and that the term had subsequently been extended to five years. He did not believe that a further extension was necessary or that the codification process was hampered by the present arrangement. Whenever it was found that consideration of a major topic could not be completed before the members' term of office expired, special or extended sessions could be arranged. Moreover, article 10 of the Statute provided that members could be re-elected. Lastly, to extend the term of office would mean impairing the flexibility of the present system, under which the General Assembly was required to consider, every five years, how the principal legal systems of the world could best be represented by persons of recognized competence in international law. For all those reasons, he did not favour the proposed modification of article 10 of the Statute.

20. With regard to the second point, he did not think it advisable to hold a winter session in 1970. Such sessions should be held only in extreme cases, particularly when drafts or recommendations of major importance were nearly in their final form and could probably be completed at a special session. The winter

session held in Monaco in 1966 for the purpose of completing the draft articles on the law of treaties must be regarded as a special case.

21. As to the third point, he would be the last to stand in the way of a limited increase in the staff of the Codification Division of the Office of Legal Affairs, to the extent necessary for additional assistance to the Commission and its Rapporteurs; his delegation greatly valued the skill and energy of the Division's staff, which at present encountered difficulties in carrying out its growing responsibilities.

22. Finally, his delegation was pleased that the fourth session of the Seminar on International Law for advanced students and young government officials had again been held at Geneva concurrently with the Commission's session. He paid a tribute to those members of the Commission who had contributed to the success of the Seminar.

23. Mr. TSURUOKA (Japan), noting that the International Law Commission was celebrating its twentieth anniversary in 1968, said that he wished to pay a tribute to those who had taken the initiative in establishing the Commission, as well as to all those who had helped to carry out the tasks entrusted to it. While it had never lost sight of the importance of its practical work, the Commission had formulated clear-cut, concise rules of international law which were easy to interpret and apply and had thus helped to place international relations on a solid legal foundation. Employing an extremely flexible method of work, the Commission had achieved success in its work by endeavouring to find solutions which were acceptable to all States, to formulate general principles and to rely on international custom and practice instead of trying to decide highly controversial questions.

24. Turning to the Commission's report, he drew attention to the importance of chapter II, which was concerned with relations between States and international organizations. That was a highly complex subject which was extremely difficult to codify owing to the fact that there were not enough well-established rules and that the existing rules often varied from one organization to another. The Commission and its Special Rapporteur were therefore to be congratulated on the draft articles which had been prepared, more particularly articles 2, 3, 4 and 5, which should make it possible to overcome those difficulties.

25. With regard to the question of the succession of States and Governments, his delegation felt that the problems involved were of such complexity that it was essential to carry out very careful studies before making any attempt at codification. The Commission could not carry out its task successfully unless it took account of all the interests involved.

26. As to the most-favoured-nation clause, Japan was, as a country which was heavily dependent on foreign trade, following the Commission's consideration of the matter with the closest attention.

27. Mr. WARNER (United States of America) said that the stage which the Commission had reached in its work in the twentieth year of its existence augured well for future advances in the progressive development and codification of international law. He wished, however,

^{4/} A/CN.4/205/Rev.1.

to express the hope that recent events and the attempts made to justify them did not signal a return to a dark era in which that process had been impeded by certain reactionary attitudes.

28. The Commission's report called for some general comments by his delegation.

29. With regard, first of all, to the question of relations between States and international organizations, his Government would submit written comments in due course and he would therefore confine himself to a few suggestions which should not be taken as criticism. To begin with, he was pleased at the flexible draft which the Commission had adopted, particularly in the case of articles 4, 5 and 6, so as not to confuse existing relationships. That should make it possible for the final text to serve both as a convention and as a model law applicable to a much broader field. In article 7, which dealt with the functions of a permanent mission, the sub-paragraph on co-operation did not add anything that was not already contained in the preceding sub-paragraphs and should therefore be deleted or else amended so as to add the words "within the organization" after the word "promoting". As to the proposed rules on accreditation in article 13, he felt that paragraphs 1 and 2, even taking account of paragraph (4) of the relevant commentary, failed to make it clear what the consequence would be if a Member State specified one particular function for its permanent representative. Would that be taken to preclude any other function? In considering the matter, the Commission should consult those in international organizations who had been faced with special problems in that regard and make certain that all aspects of the question were taken into consideration. The problem might, however, be largely one of drafting.

30. Only the first part of the draft articles was being examined, and his delegation might need to re-examine the first twenty-one articles in the light of future provisions in the remainder of the draft concerning, for example, the departures in article 1 (h) and article 2 from the corresponding rules of the 1961 Vienna Convention on Diplomatic Relations.

31. Turning to the subject of succession of States and Governments, he said he agreed with the decision of the Commission that, in the case of succession in respect of matters other than treaties, any theoretical examination should be avoided at the present time. He endorsed the suggestion that the Rapporteurs should consult each other to ensure terminological uniformity. He believed that the work must be directed towards the problems of the future, since the process of decolonization was, happily, almost complete, and it was reasonable to expect many forms of association, union and merger which would raise succession problems of the most delicate nature. Priority would have to be given to such questions as currency unions, common markets, and free trade associations. At all events, a process must be provided for the judicial settlement of disputes which would arise in that context.

32. With regard to the question of what form the final product should take, his delegation had some questions as to the advisability of a convention. It pointed out that while there must be doubts with regard to the conceivability of making any convention binding on a State which

came into existence after its adoption, the problems raised in connexion with a convention on State succession would go to the very heart of the convention and cause it to be inapplicable in those very cases to which it was designed to apply. Nevertheless, he agreed with the Commission's decision to prepare draft articles or a set of rules, as it was in the light of such a product that decisions on form could best be taken. In so far as a major objective was the enhancement of uniformity, the Commission should avoid establishing different régimes for different types of succession.

33. There could be no sounder beginning to an examination of the very complex question of most-favoured-nation clauses than the suggestion of the Special Rapporteur that he consult interested organizations and agencies.

34. He was pleased to note that the Commission had organized the work for the remainder of the present term in so orderly a manner. He expressed his gratitude for the important contribution the Secretariat had always made to the work of the Commission and, particularly, for the excellent annex which was appended to the report.

35. In conclusion, he expressed gratitude to all those who had contributed to the success of the fourth session of the Seminar on International Law and he expressed the hope that that felicitous programme would be continued.

36. Mr. DEBERGH (Belgium) said he regarded the draft articles on representatives of States to international organizations, which formed the main part of the report submitted by the Commission, as a new element in the coherent set of rules formulating the practice of diplomatic relations which should be completed in the near future. The Belgian Government proposed shortly to make written observations on the draft. It would be desirable for the General Assembly, as it had done in resolution 2273 (XXII) with regard to the draft articles on special missions, to invite Member States to submit their observations on the twenty-one articles without further delay in order to expedite the final drafting of the future convention. His delegation also supported the suggestion of the representative of Romania (1031st meeting) that the draft should be transmitted to international organizations in order to ascertain their views.

37. With regard to paragraph 26 of the Commission's report, he was pleased that regional organizations had been excluded from the scope of the draft. Any attempt to place the practices of those organizations in the same category might upset the balances which there had sometimes been difficulty in achieving. In that respect, therefore, even the moderate language of article 2 (2) of the draft was open to question. With regard to paragraph 28 of the report, his delegation agreed with the Commission's opinion that no decision should be taken on whether to include articles on permanent missions to organs and conferences of international organizations, since that question could be clarified in the work on special missions.

38. His delegation did not believe that decolonization was a very different aspect of State succession from the traditional type. Decolonization was a transitory

episode, and a piecemeal approach should not be adopted in the general study of the law of succession.

39. With regard to the Commission's decisions on organizational matters, his delegation wondered whether it would be advisable to apply the Commission's recommendation to extend the term of office to the present terms of office. It observed that the Commission itself did not seem to envisage that possibility. With regard to the increase in honoraria and per diem allowances, it did not doubt that the problems involved were real ones, but it would wait until it knew the opinion of the Advisory Committee on Administrative and Budgetary Questions before taking a position.

40. Lastly, two further points mentioned in the report were a source of gratification to his delegation: first, the valuable contacts which had been maintained by the Commission with the International Court of Justice and regional juridical bodies, and, secondly, the excellent results of the fourth session of the Seminar on International Law.

41. Mr. BONNEFOY (Chile) said his country was particularly aware of the political and legal significance of the results of the Commission's work in the course of its twenty years of existence. His delegation unreservedly approved the work programme established for the period ending in 1970.

42. With regard to the results of work concerning relations between States and international organizations and that concerning the succession of States and Governments, the Chilean Government would submit its written observations in due time.

43. He believed that the Commission should do everything possible to expedite its study of the most-favoured-nation clause, because in his opinion that question deserved absolute priority. He was pleased that the Commission had recommended the Special Rapporteur dealing with that question to cover a broad area in his work. He believed that the Commission should pay particular attention to the progressive development of law and, to that end, take cognizance of

the situation peculiar to certain groups of developing States which had not yet truly benefited from the general application of the clause.

44. With regard to the organization of working methods, the Commission had proposed in its report various measures designed to promote continuity in its work, but his delegation did not think that it was essential to extend the term of office of the members of the Commission. If it was desirable for members to continue to participate, there were other means of expediting the work, some of which were referred to in the report. One possibility to be considered would be re-election. His delegation would prefer that the size of the Codification Division of the Office of Legal Affairs should be increased and that a winter session of the Commission should become an established institution or, if that was impossible, that the annual summer session should be extended for a few weeks.

45. With regard to the "final stage" of codification, his delegation regretted that certain conventions had not yet received a sufficient number of ratifications. That could be ascribed to the excessive amount of work before interested national bodies, which did not always accord priority to international instruments. The Chilean Government hoped that that question would continue to be studied with a view to finding a solution which did not derogate from the discretionary power of States. He would not oppose a general recommendation to all Member States that they should submit the conventions within a reasonable time to their appropriate bodies in order that the latter might make a decision on their ratification.

46. Finally, on the subject of the Seminar on International Law at Geneva, his delegation expressed its pleasure at the contributions made and the part played by participants, which, in various ways, helped to make a success of that event, in which, in its opinion, jurists from developing countries should take a prominent part.

The meeting rose at 12.50 p.m.

