

United Nations
**GENERAL
ASSEMBLY**

TWENTY-THIRD SESSION

Official Records



**SIXTH COMMITTEE, 1036th
MEETING**

Friday, 11 October 1968,
at 3.30 p.m.

NEW YORK

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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. BAYONA ORTIZ (Colombia) said that the Commission had been in great part responsible for the remarkably fine achievements of the United Nations in the field of international law during the past twenty years. Those twenty years had seen both the codification and the progressive development of international law to meet the needs of an evolving international community. New economic ideas, scientific and technical advances, and even changes in the structure of the international community, were carefully studied to discover their legal implications. His delegation appreciated the efforts of the United Nations legal bodies, and urged them to continue their work with even greater determination. It would very carefully consider suggestions for facilitating their work, since it was only natural that they should be given adequate means to perform their functions.

2. The topics considered by the Commission at its twentieth session were matters of importance to the international community at the present time. If one considered the large number of international organizations now functioning, the need for a diplomatic law dealing with relations between States and international organizations was readily appreciated. Such relations represented new fields of multilateral diplomacy which required new rules — rules whose adoption must not be delayed too long if confusion was to be avoided. The excellent draft articles prepared by the Special Rapporteur had the merit of respecting the practice of States and existing international organizations, and were also co-ordinated with the Vienna Conventions on Diplomatic and Consular Relations, a fact which showed the consistency of the Commission's approach to related or similar topics. His Government would submit its comments on the draft articles in due course.

3. Although the Commission had considered the topic of succession of States and Governments on various occasions since 1949, it had not analysed it in depth before. In his delegation's view, the Commission

should take a general approach and not limit its study to the consequences of certain changes in the political structure of the world. His delegation agreed that priority should be given to aspects arising from decolonization, but thought that other questions, such as succession in modern economic integration movements, were also important.

4. His delegation was pleased that the Commission had begun consideration of the most-favoured-nation clause, and endorsed the Commission's instructions to the Special Rapporteur set out in paragraph 93 of the report. The Commission's work on that topic would be a very valuable contribution to the work of the United Nations Commission on International Trade Law.

5. Before taking a final position on the Commission's future work programme, his delegation would like to hear the statement by the Chairman of the Commission giving a general appraisal of its twenty years of activity. It understood, however, that the Commission would have to devote the next three years to the topics of relations between States and international organizations, State responsibility, the most-favoured-nation clause, and the succession of States and Governments. The Commission had already begun the study of three of those topics, and should complete its work on them because of their importance to the international community.

6. The Commission must be provided with the means and facilities which it needed to do its work efficiently. Accordingly, his delegation in principle took a sympathetic view of the suggestion that the staff of the Codification Division of the Office of Legal Affairs should be increased, and it understood the Commission's concern at the present situation regarding honoraria and *per diem*. In the Sixth Committee's discussions on the matter, his delegation would be guided by its desire to serve the interests of international law, which was essential for international peace and harmony.

7. It would be helpful if the Secretariat would submit a comparative table showing the growth of the bodies and departments concerned with legal affairs in relation to the growth of the United Nations as a whole. The impression existed that the legal bodies had not been given the importance they deserved or the resources they required to perform all the work requested of them by Member States.

8. On the other hand, his delegation did not support the proposal to extend the term of office of members of the Commission. The Commission could complete a substantial amount of work within a five-year period, and if that proved too short because of the scope or complexity of the topics under study, members who

had a special knowledge of those topics could be re-elected. However, the present term permitted a more rapid rotation of members of the Commission and thus provided an opportunity for jurists from a greater number of States to participate in the codification and development of international law.

9. Sir Kenneth BAILEY (Australia) said that the establishment of the Commission twenty years before had marked an entirely new phase in the history and development of international law. It had inaugurated a period of significant legislative activity, much of which had already led to the adoption of multilateral conventions on matters of vital importance. Texts relating to other parts of the Commission's work were well on their way to adoption, also in the form of multilateral conventions. Thanks to the Commission's constructive and forward-looking approach, the great series of articles which it had produced represented a period of more rapid and far-reaching development of international law than the international community had ever known before.

10. Since the draft articles on representatives of States to international organizations had been referred to Governments for comment, his delegation would not offer oral observations at the present stage.

11. The task of codifying the law of State succession was undoubtedly difficult and complex. The subject was full of problems, and reasons could be found for adopting any one of several different methods of treatment. For its part, his delegation found itself in full agreement with the Commission's view — expressed in paragraph 59 of its report — that it was not advisable to deal separately with the origins and types of State succession, and that for the purposes of codifying the rules relating to succession, it was sufficient to bear in mind the various situations, with a view to formulating, when necessary, a special rule for the case of a succession due to a particular cause. His delegation agreed not only with that wise conclusion but with the reasons which were to be found for it in the report. The Special Rapporteur himself had indicated the difficulty of attempting to codify that branch of law on the basis of the different historical origins of the new-State situations, such as "dismemberment", "decolonization" and "merger",^{1/} since those categories were neither mutually exclusive nor collectively exhaustive. Decolonization, for instance, despite its current political interest and importance, was from the juridical point of view merely one of the processes of transferring sovereignty from one State to another which created, or might create, succession problems. It was perhaps better, as the Commission's report implied, to take as a basis the various matters in respect of which succession should, or should not, be required—private rights, public debts, treaties and so on. It was important that the practice of all States should be taken into account. In many new-State situations, practical arrangements had been arrived at which had been beneficial in promoting a smooth transition from the old situation to the new, and in clarifying the position of all parties in respect of treaties. Those arrangements would no doubt be studied with care.

12. His delegation had noted with some regret the Commission's decision to postpone further consideration of the item on the juridical régime of historic waters, including historic bays. Despite the considerable studies made by the Secretariat, the subject remained one of real difficulty and obscurity, and definitive consideration of it by the Commission would be an important contribution towards completing work on the law of the sea, which had been initiated by the Commission itself and which had ultimately found expression in the four Geneva Conventions of 1958. His delegation hoped that the Commission would not allow so important an aspect of the law of the sea to drop out of sight altogether.

13. While his delegation by no means underestimated the heavy programme of work represented by the Commission's present agenda, it felt some difficulty with the suggestion that the term of office of the members of the Commission should be extended. To extend a current term always presented some disadvantages in principle. Even to elect future members of the Commission for a longer term seemed open to some question; with a longer term, jurists from States which could not expect their nationals to have more or less permanent representation in the Commission would necessarily find their opportunities for participating in its work restricted. On the whole, therefore, his delegation would prefer the present five-year tenure. If, within that term, ways could be found of enabling the Commission to cover more ground, his delegation would be very willing to consider them. The Commission's suggestions concerning emoluments also deserved careful attention.

14. Mr. KOSTOV (Bulgaria) said that his delegation attached particular importance to the codification and progressive development of international law. Codification was not simply the compilation of rules but also an attempt to establish a complete and unified statement of the principles underlying those rules capable of meeting the needs of the modern world.

15. His delegation had a high regard for the work done by the Commission, which, in accordance with the terms of reference set out in its Statute, had sought to reaffirm existing rules of international law and to prepare new rules in line with the demands of modern international life. Each of the Commission's annual reports had marked an advance in the task of building a harmonious system of legal rules which would promote the development of international relations on the basis of the principles of peaceful coexistence.

16. The Commission had made substantial progress towards the fulfilment of its programme at its twentieth session. His delegation was pleased to find that the draft articles on representatives of States to international organizations had been based on the provisions of the Vienna Conventions on Diplomatic and Consular Relations, the headquarters agreements and the agreements concerning the privileges and immunities of the United Nations and other international organizations, and that they reflected State practice in the matter. That was a sound approach, for the relations between States and international organizations were simply one aspect of diplomatic law. Yet at the same time the Commission had shown commendable flexibility in

^{1/} See A/CN.4/204, chapters II-IV.

taking into account the distinctive character of such relations.

17. While its final comments on the substance would have to await further study of the draft articles, his delegation would like to commend the Commission for the prudence and moderation it had exercised in drafting articles 3, 4 and 5, which dealt with the difficult legal problem of the relationship between the draft articles and the relevant rules of international organizations and other international agreements.

18. The codification of State succession was an extremely complex and difficult task. His delegation thought that the Commission should prepare appropriate provisions concerning State succession in respect of treaties which explicitly provided legal means for putting an end to unequal treaties which were relics of the era of colonial domination. It should do the same for State succession in respect of matters other than treaties.

19. The legal and economic problems related to the most-favoured-nation clause were becoming more and more important, and the need for a codification of the topic was becoming imperative. It was to be hoped that such a codification would help to eliminate discrimination in international trade. His delegation endorsed the Commission's instructions to the Special Rapporteur set out in paragraph 93 of the report. In his view, however, although there were no formal limits to the application of the clause in the various domains of economic and legal relations, its proper field of application was the area of customs, trade and shipping law.

20. His delegation was pleased that the fourth session of the Seminar on International Law had been a success, and supported the Commission's recommendation that future sessions should be held.

21. His delegation shared the desire expressed by the Secretariat and many delegations to see the Commission's work steadily increase in effectiveness. However, some of the questions that had been raised called for more thorough study in view of their financial implications. At the present stage, his delegation would simply express its doubts as to the need for an extension of the term of office of members of the Commission.

22. Mr. SAGBO (Dahomey) noted with satisfaction that article 2 of the draft articles on representatives of States to international organizations provided that the rules set forth in those articles might be applied not only to international organizations of a universal character within the United Nations system but also to any international organization of a universal character, as the member States of such organizations saw fit. His delegation also approved of the wording of article 3, which provided that any international organizations might apply those specific rules which were best suited to their goals and structure.

23. His delegation approved of the International Law Commission's decision to give particular attention, when dealing with the question of the succession of States and Governments, to the problems of the newly independent States, in particular those which had become independent as the result of decolonization.

24. The proposal to extend the term of office of the members of the Commission required carefully study, and it would be premature to take any decision at the present time. In considering that question, account should be taken of the principle of rotation and also of the fact that the possibility of re-election already ensured a certain degree of continuity in the work of the Commission.

25. He expressed appreciation to those Governments which had awarded scholarships to nine nationals of developing countries in order to enable them to participate in the fourth session of the Geneva Seminar on International Law. He hoped that the practice of holding annual sessions of the Seminar would be continued and that more scholarships would be offered in order to make it possible for more participants from developing countries to attend.

26. Mr. ESPEJO (Philippines) congratulated the International Law Commission on its report. Owing to the delayed publication of the report, his Government had not yet had time to study it and to give instructions to his delegation.

27. His delegation would comment at a later stage on the draft articles on representatives of States to international organizations. He commended the balance and flexibility of the articles and supported the proposal made earlier in the Committee that the draft articles should be transmitted not only to Governments for their observations but to international organizations as well (1031st meeting).

28. His delegation had expressed its approval at the twenty-second session of the General Assembly of the decision to divide the topic of succession of States and Governments, with a view to advancing its study more rapidly (962nd meeting). He noted that work on that topic was progressing and that the Commission had decided that the study of the two headings being dealt with should combine the technique of codification with that of progressive development. He hoped that work on the third heading in the division of the topic made by the Commission's Sub-Committee on the Succession of States and Governments, namely, succession in respect of membership of international organizations, could begin soon after a convention on relations between States and international organizations had been adopted.

29. His delegation looked forward to hearing the statement to be given by the Chairman of the Commission appraising the Commission's twenty years of activity, which would provide the Committee not only with a review of the Commission's past but also with an opportunity to make suggestions regarding its future work.

30. With regard to the proposal to extend the term of office of members of the Commission, his delegation felt that the reasons adduced in favour of such an extension were balanced or even outweighed by the natural desire of other States to be given the opportunity of membership in the Commission. His delegation would state its views at a later stage on the proposal to increase honoraria and per diem for Commission members.

31. Mr. RATTANSEY (United Republic of Tanzania) paid a tribute to the International Law Commission's considerable achievements, over the past twenty years, in the codification and progressive development of international law. It was a task naturally fraught with difficulty and delay owing to the innate desire of States to gain advantages at the expense of others. Nevertheless, his delegation felt strongly that the International Law Commission should continue to work in the same manner, at the same speed, and produce results within its present five-year term of office. Any extension of that term might only lead to a slackening of the work. As the representative of the USSR had said, the inflow of new blood to the Commission should not be stemmed. He pointed out in that connexion that at the time of the Commission's establishment, his own and many other States had not been free countries.

32. The Commission had been wise to divide the topic of succession of States and Governments under different heads and to give priority to the topic of succession in respect of treaties. Lengthy consultations with States and regional organizations would be needed in order to find an acceptable formula. His own country had been a victim of colonialism and had rid itself of the colonial yoke only after a severe and prolonged struggle. The colonial Powers, before leaving, had imposed on the country treaties which were not in the national interest and which could not be regarded as agreements concluded between two equals. The International Law Commission must identify international norms to cover such cases which would be acceptable to young nations like his own. The treaties imposed by the colonial Powers with a view to their own future political interest had left in their wake a trail of disputes and divisions.

33. His delegation took a keen interest in the Commission's work on the most-favoured-nation clause. The United Republic of Tanzania was primarily an agricultural country, but since independence it had made rapid progress in its trade and industrial development. His delegation would follow the Commission's work on that topic with great interest and would make its comments at the appropriate time.

34. His delegation had not yet had time to make a thorough study of the draft articles on representatives of States to international organizations, but it held the view that consideration should be given to regional intergovernmental organizations in the same way as to universal international organizations.

35. Mr. NAINA MARIKAR (Ceylon) congratulated the Commission on its achievements and expressed his gratitude to the three Special Rapporteurs for the excellent reports on the topics assigned to them.

36. Commenting on the draft articles on representatives of States to international organizations, he welcomed the fact that article 16 endorsed the principle that the size of the permanent mission should not exceed what was reasonable and normal, having regard to the functions of the organization, the needs of the particular mission and the circumstances and conditions in the host State. He agreed with the Canadian representative (1031st meeting) that article 19 might have to be revised in order to specify which alphabeti-

cal order would determine the order of precedence of missions.

37. He was glad to note that the Commission, in its study of State succession, referred specifically to State succession resulting from decolonization and made special mention of the need for both codification and progressive development of international law in that field. As the representative of a State which had regained its independence in recent times and which was still engaged in assessing the legal relationships inherited through past association with the colonial Power, he welcomed the attempt to develop and codify the principles applicable in that type of State succession. In general, he approved of the approach adopted on that subject and looked forward to further elaboration and refinement of principles along those lines.

38. He commended the Special Rapporteur on succession of States and Governments in respect of treaties on his excellent first report.^{2/} His delegation felt, however, that the provision in article 2 that the articles as a whole did not relate to "international agreements concluded between States and other subjects of international law or between such other subjects of international law" might lead to confusion if applied to decolonization situations. The question also arose as to whether the articles would be applicable to agreements between two parts of a colonial empire which subsequently became independent and what would be the effect of such agreements when one of those parts had regained its independence and the other had not. He hoped that such problems would be dealt with under the topic and that article 2 did not foreshadow their exclusion.

39. He questioned the use of the term "new State" and "old" or "predecessor State". The term "new" could not properly be applied in the case of an ancient State which was subjugated and exploited for three or four centuries and then gained political independence in the twentieth century. In his delegation's view, the so-called "new" State should rather be termed the "original" State. His delegation was concerned that the principles finally stated should have a sound historical and economic basis. Not only the pre-independence phase of a country's past but also the period of independence prior to colonial rule might perhaps be relevant in determining the principles applicable in respect of State succession. As his delegation had stressed at the previous session (959th meeting), high priority should be given to the topic of succession of States and Governments in the Commission's programme of work.

40. His delegation welcomed the Commission's decision to review its programme and methods of work. During the twenty years of the Commission's existence, the volume and complexity of United Nations activities in the legal field had grown apace, and it would be timely for the Commission, as the main institution having responsibility for the development and codification of international law, to take stock of developments and assess new opportunities for the future.

41. While sympathizing with the Commission's search for some means of avoiding a general disruption of its

^{2/} A/CN.4/202.

major projects through changes in membership, his delegation wished to support the Canadian proposal that consideration should be given to the possibility of holding two meetings each year (1031st meeting). His delegation would support any constructive measure designed to maximize the Commission's invaluable contribution to the international community.

42. Mr. OGUNDERE (Nigeria) paid a tribute to the International Law Commission for its great efforts in recent years in the progressive development and codification of international law.

43. The draft articles on representatives of States to international organizations reflected the collective scholarship and industry of the Commission. He noted that the draft articles set out residuary legal norms from which States might derogate. Article 4 and particularly article 5 made it clear that States might conclude other international agreements having different provisions concerning the representatives of States to an international organization. He commended the flexibility which was the hallmark of the draft articles. His country was a member of the largest regional organization in the world, the Organization of African Unity, and he noted with satisfaction that the provisions of article 2 made it possible for regional organizations to apply the articles to representatives to such organizations. His delegation would comment further on the draft articles after it had made a thorough study of them.

44. His delegation, which had consistently urged the International Law Commission to speed up its work on the succession of States and Governments, was gratified to note that the Commission was tackling the problem vigorously. The division of the topic under three heads was in harmony with the international trends which had emerged in the preparation of a convention on the law of treaties. He could not agree with those who maintained that the problems arising from State succession in respect of treaties in other than the rare cases of dismemberment and merger would evaporate with the complete liquidation of colonialism. The problems of succession raised in connexion with decolonization would endure as long as the treaties succeeded to by the former colonial States were in operation. In such treaties all the advantages were on the side of past colonial Powers and other States which were parties to such treaties. Since the former colonial Powers had in their archives all the documents and records relating to such treaties, they could use them to the detriment of the newly independent States, which had no access to such documents and often experienced the greatest difficulties in obtaining copies of treaties to which they had succeeded. His delegation therefore welcomed the decision of the International Law Commission to give special attention to the problems of new States in its work on succession.

45. His delegation, which had spoken in previous years on the need to make a special study of the most-favoured-nation clause, commended the Commission for instructing the Special Rapporteur on that subject to make a study of it not only in relation to its role in the domain of international trade but also in relation to other major areas of its application.

46. His delegation noted with satisfaction the successful organization of another session of the Geneva Seminar on International Law and thanked those Governments which had awarded scholarships to participants from developing countries. He hoped that other Governments would emulate their example.

47. His delegation was in broad agreement with the Commission's programme of work. Since a convention on the law of treaties was likely to be completed in 1969, it urged the Commission to speed up its work on the succession of States in respect to treaties and on the most-favoured-nation clause, so that a comprehensive body of legal norms with regard to treaties would be available to the international community as soon as possible.

48. With regard to the proposal to extend the term of office of members of the Commission, his delegation was not sure that it was either right or expedient to do so, when members had the opportunity of standing for re-election. His delegation was in sympathy with the proposal for an increase in the allowances of special rapporteurs and would give it further consideration. His delegation would also consider favourably any reasonable increase in the staff of the Codification Division of the United Nations Office of Legal Affairs, but considered that it would be preferable if a comprehensive paper were submitted to Governments on the matter.

49. Mr. ALCIVAR (Ecuador) began by recalling some of the illustrious names that had graced the history of the International Law Commission and their considerable achievements in the codification and progressive development of international law. The Statute of the Commission made it clear that international law was to be developed by the incorporation of *lex ferenda* as well as by the codification of *lex lata* and that the most important task was to ensure that legal norms were developed to meet the requirements of the modern world.

50. Commenting on the twenty-one draft articles on representatives of States to international organizations, he stressed the importance of a member State's absolute freedom of choice in appointing its representatives and the unconditional obligation of the host State to grant those representatives their full privileges and immunities. Notwithstanding Article 105 of the Charter of the United Nations, in the past certain difficulties had arisen in the United Nations in that regard and he wished to express his delegation's full agreement with the statement made by the Legal Counsel on that subject during the twenty-second session of the General Assembly (1016th meeting). He was also unable to see why regional organizations should not be included within the scope of the articles, but he would prefer to study the text in greater detail before committing himself.

51. He welcomed the progress made by the Commission in studying State succession and the most-favoured-nation clause and emphasized the importance of the subject of State responsibility in its future programme of work. There were, however, other related items which should be studied as soon as possible, particularly the draft code of offences against the peace and security of mankind and the

question of international criminal jurisdiction. The world was going through a stage of transformation and that inevitably led to a clash between those who were in the vanguard of progress and those who were attempting to stop the march of history. The balance of power might still be a valid formula of international policy, but armed peace had now become the cold war. There was, therefore, an urgent need to establish legal norms that would help to regulate that political situation, particularly with the reappearance of the detestable policy of spheres of influence.

52. He wished to offer his congratulations to the United Nations Office at Geneva on the success of the Seminar on International Law. Such seminars were of great benefit to the developing countries and he hoped that the practice of holding them would be continued.

53. With regard to the proposal to extend the Commission's term of office, he was not yet in a position to put forward his Government's views and would merely point out that, in the International Court of Justice, the term of office was nine years and related to individual members and not to the whole body, as in the case of the Commission. That enabled the Court to achieve a greater sense of continuity in its work.

54. He was in favour of the Commission's recommendations regarding an increase in the emoluments of members of the Commission, expansion of the staff of the Codification Division of the Office of Legal Affairs and the holding of a winter session in 1970. The only argument put forward by members of the Committee against those recommendations had been the question of cost. He would merely remind the Committee that the sums involved were but an infinitesimal fraction of what was spent on the arms race and that the work of the International Law Commission was one of the most important contributions to the cause of world peace.

55. Mr. EL-ERIAN (United Arab Republic) said that he fully agreed with the statement of the Chairman of the International Law Commission that the presentation of the Commission's report in the Sixth Committee was not a mere formality but rather an important means of strengthening the close ties between the two bodies (see A/C.6/L.647).

56. The report revealed that the Commission's twentieth session had been important, constructive and productive. He did not wish to comment in detail on the twenty-one draft articles on representatives of States to international organizations but he wished to pay a tribute to the Commission for the way in which it had succeeded in reconciling different points of view and reaching common ground. With regard to the study of State succession, he was pleased to note that the Commission had given particular attention to the problems of new States, as it had been asked to do in the relevant General Assembly resolutions.

57. He was confident that the Sixth Committee and the International Law Commission would reach agreement regarding the Commission's methods of work. He would merely point out that the codification and progressive development of international law was inevitably slow and painstaking work, and that the success of the Commission's work in the past was proof of the wisdom of such an approach. The twentieth anniversary of the Commission provided a good opportunity for taking stock, and he welcomed the survey of work presented in the report as a useful aid to determining the future work programme and the order of priorities. He was also glad to note that regional legal committees had continued to co-operate with the Commission. In conclusion, he wished to express his delegation's satisfaction with the work programme of the Seminar on International Law.

The meeting rose at 5.30 p.m.