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**Chairman:** Mr. Vratislav PĚCHOTA  
(Czechoslovakia).

*In the absence of the Chairman, Mr. Molina (Venezuela), Vice-Chairman, took the Chair.*

AGENDA ITEM 84

Reports of the International Law Commission on the second part of its seventeenth session and on its eighteenth session (continued) (A/6309 and Add.1, A/6348 and Corr.1, A/C.6/371)

1. Mr. CHEN (China) congratulated the International Law Commission, and particularly its Special Rapporteurs, on its achievements, as set forth in its reports, and especially on the draft articles on the law of treaties (see A/6309), which represented an important step forward in the progressive codification of international law. His delegation intended to comment on the substance of those articles at a later stage, and he would therefore confine himself to a few general remarks.

2. The principle pacta sunt servanda, which had long been honoured by his people, was essential to the legal order of the international community, and his delegation was gratified to see it reaffirmed in article 23. His delegation's support of that principle, however, should not be construed as meaning that it opposed any change in the status quo; it had no desire to perpetuate any unreasonable international situation, and in view of the swiftness with which the modern world was changing, it favoured the application of the doctrine rebus sic stantibus whenever and wherever the demand for equity was justified. Almost all modern jurists, however reluctantly, admitted that doctrine's existence in international law; it served to balance the principle pacta sunt servanda, and his delegation considered that in article 59 the Commission had had the right approach to the matter.

3. His delegation had noted with interest the inclusion in article 49 of the principle that a treaty was void if its conclusion had been procured by the threat or use of force in violation of the principles of the Charter of the United Nations. That idea, which was comparatively new, was quite different from the traditional concept. His delegation had not reached any decision on that article but would be only too happy to see would-be aggressors deprived of any advantage acquired through the illegal threat or use of force.

4. With regard to the proposed conference of plenipotentiaries, his delegation wished to thank the Secretary-General for his memorandum on the procedural and organizational problems involved (A/C.6/371) and was prepared to support the the majority opinion with regard to the date and site of the conference, the division of the articles among two or more committees, and the division of the conference into two sessions. The problem of participation, however, was a controversial one. His delegation fully supported the Canadian representative's view (904th meeting) that the formula used for other United Nations codification conferences should be adopted and invitations sent only to States Members of the United Nations, States members of the specialized agencies, and States parties to the Statute of the International Court of Justice. As the United Kingdom representative had correctly pointed out at the 908th meeting, any departure from that formula would cause undue delay.

5. Mr. ROSENNE (Israel) said that the memorandum by the Secretary-General (A/C.6/371), which had been submitted in response to a suggestion made by his delegation in 1965, admirably met the purpose his delegation had had in mind. Apart from the inherent value of the memorandum, its submission after informal examination by the International Law Commission was an important development in the techniques of codification. It had ensured that the Commission's recommendation would not appear in a vacuum and that all its implications would be known. His delegation hoped that that type of memorandum and informal discussion with the Commission would become standard practice in the future.

6. His delegation approved the recommendation to convene a conference of plenipotentiaries to conclude a single convention on the law of treaties. That was the logical conclusion to be drawn from the series of General Assembly resolutions on that subject since 1961 and from the Assembly's repeatedly expressed desire that the law of treaties should be placed on the widest and most secure foundations.

7. With regard to the date of the conference, at the Commission's 879th meeting he, in a personal capacity, had expressed doubts regarding the proposal to convene it in 1968.<sup>1/</sup> His delegation had now considered the matter in the light of the Secretariat memorandum and had concluded that there were no insuperable obstacles to holding the conference in 1968.

8. His delegation also approved the suggestion that the Sixth Committee at its next session should engage upon a substantive discussion of the draft articles on the law of treaties. It would be useful if that discussion

<sup>1/</sup> See Yearbook of the International Law Commission, 1966, vol. I.

could take place in the light of further written comments from Governments, the Secretary-General of the United Nations and the Directors-General of the appropriate international organizations, even if they were only in a tentative and suggestive form. Those comments might even contain proposals for possible amendments. His delegation, therefore, suggested that Governments and the appropriate international organizations should be invited to submit written comments on the final text of the draft articles by 1 August 1967, without prejudice to any further written comments they might desire to make before the conference began. The discussion at the next session, for which ample time should be allowed, should take place as early as possible during the session, so that Governments would have sufficient opportunity to examine the debate when making their final preparations for the conference and, if necessary, to commence the diplomatic negotiations to which paragraph 12 of the Secretary-General's memorandum alluded and to which his delegation attached importance. With those considerations in mind, his delegation would be prepared—as an exception that should in no way constitute a precedent—to have that item discussed first by the Sixth Committee at its next session. It would also be highly desirable if Sir Humphrey Waldock could attend the debate on the law of treaties. Only the Special Rapporteur was in a position to provide satisfactory answers to questions about the draft articles and the commentaries. Lastly, in view of the experience of the United Nations Conference on the Law of the Sea and the complexity of the law of treaties, the Secretariat, in planning for the twenty-second session of the General Assembly, should keep in mind the possibility that verbatim records of the Committee's discussion on the draft articles might be required.

9. On the question of the possible division of the work of the committee stage of the conference, his delegation's preference was for a single committee of the whole to examine the entire draft, on purely budgetary and general administrative grounds. On the other hand, it recognized that the considerations in favour of two main committees were strong. Without prejudicing his delegation's position on the question of principle, he wished to draw attention to the matter of how the division of work between two main committees was to be effected. It had always been recognized that there must be some element of arbitrariness in any division, and he supposed that the scheme set forth in paragraph 16 of the Secretary-General's memorandum (see A/C.6/371) was no more than tentative. It would be altogether advantageous if the Secretariat would consult further with Sir Humphrey Waldock, and perhaps unofficially with the Commission itself, before it presented any final recommendations on that question. His delegation also assumed that the final decision would be taken by the diplomatic conference itself, which was normally autonomous in matters of that sort, although further discussion of concrete and considered proposals by the Sixth Committee at the twenty-second session of the General Assembly would certainly be of great assistance.

10. The question whether the conference should be held in one session or two was even more important.

Having regard to the major significance of the codification of the law of treaties and the importance of unrushed study by the interested Governments before the final seal of approval was placed upon the articles to be adopted, his delegation supported the proposal to hold two sessions. If the conference was to be divided into two stages for the express purpose of affording Governments a further opportunity to study the draft articles after they emerged from the committee stage, then the conference drafting committee should remain in session for a week or ten days after the conclusion of the committee stage so that in the interval Governments would have before them not only the result of the work of the committee stage but the drafting committee's recommendations regarding it. His delegation hoped that the official records of the committee stage would rapidly be available to Governments in that period. Unless those steps were taken, most of the advantages of dividing the conference into two stages would be lost.

11. His delegation had heard with interest the Indian delegation's suggestion that the planning and the budgetary allocations should be on the basis of a two-stage conference but that the final decision should be taken by the conference itself and hoped that there were no technical difficulties in the way of such an approach.

12. With regard to the rules of procedure of the conference, his delegation was in general satisfied with the Secretariat's conclusions (see A/C.6/371, para. 58). The Secretariat might usefully consider, however, the delicate problem of motions for reconsideration, especially at the committee stage. Under rule 53 of the rules of procedure of the 1963 Conference on Consular Relations, a motion to reconsider, even in committee, required a two-thirds majority.<sup>2/</sup> His delegation fully appreciated the necessity of providing adequate safeguards against the reopening of issues that had been formally decided by vote, but thought that the rule might be too rigid and not quite appropriate for a conference on the codification of the law of treaties, especially should consequential amendments to texts already adopted become necessary as a result of a vote by division on a later text; and it therefore asked the Secretariat to subject the question to closer examination. The matter, of course, was closely connected with the question of the functions and powers of the conference drafting committee, discussed in paragraphs 42 to 44 of the Secretary-General's memorandum.

13. Subject to those general observations, his delegation approved the general pattern for the conference and its organization indicated by the Secretariat, and it hoped that the Secretariat would be authorized to proceed in accordance with it.

14. On the substance of the draft articles, he first strongly urged that they be examined not only from the point of view of what they omitted but, above all, from the point of view of what they contained. More important, it must always be borne in mind that they were closely integrated and constituted a single whole. That was why the Commission had recommended the

<sup>2/</sup> See United Nations Conference on Consular Relations, Official Records, vol. I (United Nations publication, Sales No.: 63.X.2), pp. xxxiii.

conclusion of a single convention, and why the organization of the conference should not be such as to prejudice that outcome. Secondly, his delegation attached considerable importance to paragraph 35 of the Commission's report (see A/6309). That paragraph had been included very deliberately and should not be regarded as a mere routine statement. It had important political implications; for it meant that each provision must be considered on its own intrinsic merits, in its context in the articles as a whole and in the light of the requirements of contemporary international society, and not on the basis of preconceived and possibly outdated notions of what the law was or purely idealistic conceptions of what it ought to be. It also seemed premature to divide the articles into categories and attach to them epithets having a doctrinal nuance, for that might easily deflect attention from the real issues that the articles posed.

15. It was very necessary that the reference guide to the legislative history of the draft articles referred to in paragraph 10 of the Secretary-General's memorandum—which should be modelled on the reference guide to the articles on the law of the sea, with its excellent system of indexes and cross references to the Commission discussions—should be made available with the least possible delay.<sup>3/</sup> The same also applied to forthcoming volumes of the Commission's yearbooks.

16. His delegation wished to associate itself fully with the tribute paid to Sir Humphrey Waldock in paragraph 38 of the Commission's report.

17. It approved the suggestion made in debate (904th meeting) that the Committee's conclusions should be reflected in two draft resolutions: one relating exclusively to the law of treaties, and the other to other questions arising out of the Commission's reports.

18. The Commission should be encouraged to continue its work on the question of special missions on the lines previously followed. At the same time, his delegation hoped that the Commission would be able to present its final draft in the fewest possible number of terse articles, and that it would also, perhaps with the assistance of the Secretariat, adopt its final recommendations after having taken due account of the practical implications of their implementation.

19. With regard to the future work of the Commission, his delegation approved paragraphs 72 to 74 of the Commission's report. It hoped that the Commission, in addition to completing its examination of the topic of special missions in 1967, would be able to complete its work on the topic of relations between States and intergovernmental organizations within the next two or three years. It would be useful if the General Assembly were to give some indication of its preferences as to the priority between the topics of succession of States and Governments and State responsibility. His delegation questioned whether the topic of State responsibility was really ripe for codification, especially in the light of the report of the 1963 Sub-Committee on that question.<sup>4/</sup> On the other hand, it

<sup>3/</sup> See Official Records of the General Assembly, Eleventh Session, Annexes, agenda item 53, document A/C.6/L.378.

<sup>4/</sup> See Yearbook of the International Law Commission, 1963, vol. II (United Nations publication, Sales No.: 63.V.2), pp. 260-300, document A/CN.4/160.

believed that the time had come for a start to be made on the substance of the question of succession of States and Governments and that the question of the succession of States and treaties would be a promising field for immediate investigation. However, in its view, that could and should be done in complete independence of the codification of the general law of treaties on the diplomatic level. Indeed, until that codification had been completed, a satisfactory clarification of that branch of the law might not be entirely feasible. Furthermore, it would be unwise for the Commission to be asked to undertake the codification of that branch of the law in any way other than that laid down in its Statute, and its final report on the topic should only be adopted in the light of the observations of Governments and possible debate in the Sixth Committee on any preliminary report the Commission should decide to submit. His delegation hoped that the additional material to which the Sub-Committee on Succession of States and Governments referred in its 1963 report would soon be made available.<sup>5/</sup>

20. His delegation supported the suggestion which had been made during debate that the Commission should engage in further study of the topic of the most-favoured-nation clause. There, again, the study should not be related in any way to the diplomatic codification of the general law of treaties. The topic could only be completed adequately in the light of the final diplomatic text on the law of treaties.

21. His delegation maintained its traditional position that the final decision on the future programme of work rested with the Commission itself. At the same time, experience had shown that an indication of the general sentiment prevailing in the Sixth Committee was of great value to the Commission.

22. With regard to the duration of the Commission's sessions, and particularly to paragraph 75 of the Commission's report, his delegation shared the view of some other delegations that it would be timely to invite the Commission to re-examine that question and to submit its observations to the General Assembly. If the Commission, after the forthcoming elections, should wish to propose a new pattern for its sessions and other adjustments in its general administrative arrangements, it should feel free to do so, even to the extent of suggesting possible amendment of its Statute.

23. His delegation had noted with satisfaction the expansion of the Commission's formal relations with other bodies and hoped that in coming years such co-operation would be broadened even further. It also hoped that the seminars on international law (see A/6309, paras. 81-84) would be continued. In connexion with paragraph 82 of the Commission's report, he was authorized to state that if there was any unexpended balance of the scholarship which his Government had made available in 1965, the Secretariat might make use of it in the coming year, on the same conditions as his delegation had expressed at the 840th meeting of the Committee.

24. Speaking in his personal capacity, he said he considered the Seminar on International Law to be

<sup>5/</sup> *Ibid.*, para. 16.

extremely useful for both the students and the members of the Commission. In 1965 and in 1966 the participants had been well chosen, and the programmes had been well conceived and on the whole well executed. At the same time, he thought that there would be value in extending somewhat the scope of the matters examined by the Seminar and the circle of the students' direct and personal contacts. The United Nations Office at Geneva alone offered excellent opportunities for studying the practical aspects of organized international diplomacy and the inner workings of the United Nations. In addition, there were the specialized agencies that had headquarters at Geneva and a large number of important non-governmental organizations. He therefore urged those responsible to examine the possibility of extending the circle of lecturers, without, however, changing the organizational and administrative framework within which the Seminar was held.

*Mr. Pěchota (Czechoslovakia) took the Chair.*

25. Mr. PAYSSE REYES (Uruguay), after congratulating the International Law Commission on its excellent reports, said that his delegation had been particularly gratified to note that the Commission had established a co-operative relationship with the European Committee on Legal Co-operation and the Inter-American Council of Jurists. He was particularly interested in the former's work on reservations to international treaties; and the subjects dealt with by the latter were of such fundamental importance for international peaceful coexistence that he hoped it would be possible for them to be studied on a world-wide as well as a regional basis, and possibly in the Sixth Committee itself. His delegation shared the Commission's views concerning the Seminar on International Law, which were fully in the spirit of General Assembly resolution 2045 (XX) of 8 December 1965. With regard to its work on special missions, he welcomed the Commission's decision to request Member States to forward their comments on the subject as soon as possible, and, in any case, before 1 March 1967 (see A/6309, para. 71). His delegation's views on all of the above matters were embodied in a draft resolution that would be submitted shortly.<sup>6/</sup>

26. Turning to the draft articles on the law of treaties, he questioned the utility of discussing the substance of the individual articles in the Sixth Committee, since it was obviously the Commission's intention to refer them to the judgement of a higher body, namely, an international conference of plenipotentiaries. His delegation was fully in favour of convening such a conference, which in its opinion should be held at Geneva, in April or May 1968, and should be open to all States. Governments should be requested to submit their comments on the draft articles to the Secretary-General by 1967. The Secretary-General should be responsible for planning and convening the conference, which should be held in a single session lasting ten weeks, with its work divided between two committees. The rules of procedure used at the conference should be the same as those used at the Conferences on the Law of the Sea. With respect to voting, a two-thirds majority vote rather than a simple majority should be required. His dele-

gation's views on the proposed conference were also embodied in a draft resolution, which would be submitted shortly.<sup>7/</sup>

27. His delegation did not propose at that stage of the general debate to comment on the substance of the draft articles. However, it noted with satisfaction that although article 23 had been devoted to the principle *pacta sunt servanda*—a principle which some Governments could accept only with certain reservations—the Commission had very properly qualified that article in part V, which dealt with the invalidity, termination and suspension of the operation of treaties.

28. In conclusion, he suggested that the Committee might be well advised to reduce the number of meetings assigned to the law of treaties and to devote more of its attention, and at an earlier date in the session than originally planned, to the right of asylum, a topic which was of particular interest to the Latin American States because of its close connexion with human rights and individual liberties.

29. Mr. TERCEROS BANZER (Bolivia) congratulated the International Law Commission, particularly its Chairman and Special Rapporteur, on its reports, and he commended its decision to cast its work on the law of treaties in the form of draft articles rather than an expository code. His delegation favoured convening a conference of plenipotentiaries to conclude a convention on that subject, but as yet had no definite opinion regarding the date, site and procedural arrangements for such a conference.

30. His country shared the concern expressed in the Commission by the representatives of newly independent countries with regard to article 69, and hoped that some way could be found to allay their misgivings. It was encouraging to note in that connexion that in paragraph 3 of its commentary on that article (see A/6309) the Commission had stated that the reservation regarding cases of a succession of States was formulated in entirely general terms and should not appear to prejudice any of the questions of principle that might arise.

31. At the Committee's 907th meeting the Panamanian representative had expressed the fear that the term "treaty", as used in article 2, subparagraph 1 (a), might give rise to constitutional problems in some Latin American countries. In his view that fear was groundless, inasmuch as article 2, paragraph 1, stated that the term was defined only "for the purposes of the present articles", and paragraph 2 stated that the provisions of paragraph 1 regarding the use of terms in the articles were without prejudice to the use of those terms or to the meanings which might be given to them in the internal law of any State. Furthermore, in paragraph 15 of its commentary on article 2, the Commission specified that paragraph 2 of that article was designed to safeguard the position of States in regard to their natural law and usages and, more especially, in connexion with the ratification of treaties. His delegation therefore approved the definition used in the draft articles and agreed that it should apply only to treaties concluded between States, excluding those to which other sub-

<sup>6/</sup> Subsequently circulated as document A/C.6/L.594.

<sup>7/</sup> Subsequently circulated as document A/C.6/L.595.

jects of international law, such as international organizations and rebellious communities, were parties.

32. With regard to article 23, his delegation supported the principle *pacta sunt servanda*, on which the law of treaties was based, but considered that the expression "treaty in force" could not be applied to a treaty which was void *ab initio* or unjust. Other delegations had discussed adequately the question of invalid treaties. He would like, therefore, to stress the problem of unjust treaties, which was indistinguishable from that of unjust legislative enactments in domestic law. A treaty was simply an expression of general legal principles in the form of legally binding rules; and those general legal principles laid down certain limits which treaties must not overstep. A treaty that was incompatible with a general legal principle was an unjust treaty. The concept of the unjust treaty, if carelessly applied, could of course lead to international anarchy; but the fear of such an extreme case should not be allowed to prevent the peaceful rectification of situations arising out of positive law that were notoriously unjust. The welfare of the international community admittedly took precedence over the welfare of individual States, but it must be based on respect for the essential rights of each State. His delegation therefore opposed any treaty the conclusion of which had been procured by the threat or use of force and hoped that the United Nations would always be able to call upon those who benefited from such treaties to accept the principles of justice, which were the only possible basis for international peace. His delegation consequently supported article 49, but felt that the definition of force should not be limited to armed force alone, but should be widened to include moral coercion, economic pressure, obstruction of communications and any act which might influence the free will of a State and thus prevent that equality between the parties which was essential to the conclusion of a valid treaty.

33. Mr. MUTUALE (Democratic Republic of the Congo), after expressing his delegation's appreciation of the International Law Commission's reports (A/6309), said that he would not comment on the substance of the draft articles at the present time because, in his view, any undue haste in formulating objections might jeopardize or delay the adoption of a convention on the subject by an international conference of plenipotentiaries. His delegation was in favour of convening such a conference and would be prepared to discuss the draft articles in detail on that occasion. Inasmuch as the success of the conference would obviously depend upon careful preparation, he stressed the importance of the following points.

34. First, the comments of Governments on the draft articles should reach the Secretariat during the first quarter of 1967 in order to be circulated to all States in good time. That would permit an exchange of views between countries of different legal systems that would enable each of them to take fully into account the difficulties which might be expected to arise at the conference. That exchange should also help to reduce the length and cost of the conference, as well as facilitate the rapid adoption of a convention.

35. Secondly, it was important for the success of the conference to prepare suitable rules of procedure. Although his delegation had no definite preference as to whether those rules should be prepared by the Secretariat or the Sixth Committee, it felt that a draft prepared by the Committee, in which all countries were represented, was less likely to be the subject of dispute at the conference. The rules, of course, should be based on those adopted at previous codification conferences, and in particular on those of the 1963 United Nations Conference on Consular Relations.

36. Lastly, with respect to participation in the conference, his delegation felt that not only should all States Members of the United Nations be invited but also the States members of the specialized agencies and all States recognizing the jurisdiction of the International Court of Justice. No State, however, should be excluded *a priori*, because, after all, the final objective of the law of treaties was to create greater harmony among the nations of the human community as a whole and to establish a genuine international law resting on the broadest possible foundation.

37. His delegation disagreed with those delegations which proposed to determine in advance the number of meetings to be held at the conference. The question should be left to the discretion of the conference itself, which would be better able to take a decision in the light of the progress it was making. The question of venue should be decided on the basis of both financial and technical criteria. Those delegations which, like his own, represented developing countries were naturally anxious to keep expenses to a minimum; but at the same time it should be borne in mind that the success of the conference would also depend on the availability of competent technical services.

38. With regard to the draft articles generally, he noted with satisfaction that the Commission had not confined itself to recording the customary norms on the law of treaties but had proposed new norms to the General Assembly and to Governments. In the view of his delegation, those norms must be judged in the light of their implications for, and repercussions on, the right of self-determination, the equality of all States in the formulation of international law and the right of each country to sovereignty and independence. A convention on the law of treaties that gave proper heed to those three principles would do much to remove the anomalies of the past, when the simultaneous existence of large and small, strong and weak States had resulted in the conclusion of hundreds of unequal treaties.

39. In conclusion, he expressed regret that the Commission had not seen fit to include in its draft articles two topics which his delegation considered of particular importance: the question of the succession of States and Governments and that of the international responsibility of a State with respect to a failure to perform a treaty obligation. He also regretted the absence of any provision concerning the sanctions to be applied in the case of the non-performance of treaty obligations concluded on the basis of the future law of treaties.

*The meeting rose at 4.55 p.m.*