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CONTENTS

	Page
Twentieth anniversary of the first election of members of the International Law Commission	1

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

Twentieth anniversary of the first election of members of the International Law Commission

1. The CHAIRMAN said that the Sixth Committee had already had occasion to express its appreciation to the International Law Commission for the valuable work it had accomplished over the years for the progressive development and codification of international law. The anniversary now being commemorated was an occasion for referring to the relations between the two bodies. It was the Sixth Committee which had completed the process of drafting the Statute of the Commission, and which each year considered in detail the report of the Commission and assisted in strengthening and co-ordinating the relations between it and the General Assembly. Furthermore, the fact that some members of the Commission were also the representatives of their countries on the Committee enhanced the harmonious relationship between the two bodies. He felt sure he was representing the views of the Committee in saying that the Commission should have a substantial degree of autonomy and not be subject to detailed directives from the General Assembly.

2. The Commission had been set up at a time when the geography of international law was undergoing change. Its birth had coincided with the emergence of a large number of new States as sovereign nations and as Members of the United Nations. That was of more than quantitative significance, for it was increasingly asked how far the new nations were bound by an international law which they had not helped to create. In his view, international law could not be allowed to remain the prisoner of concepts formulated under different circumstances and for different purposes, since there would be crisis in the international community if legal values were separated from existing realities.

3. As Professor Jennings had pointed out, the implementing of Article 13 of the Charter of the United Nations was surely a task the urgency and importance of which yielded place to none of the other problems that faced the international lawyer today. Among the academicians, there were those who considered that attempts to codify international law constituted a clear menace to its development; others expressed the view that the absence of agreed rules was a serious challenge to the legal nature of international law. He himself felt that the "old" nations had to some extent shown a spirit of accommodation and had responded favourably to the codification movement. But, as had been pointed out by Wilfred Jenks, there was need for a longer perspective in the attitude of the older States, which had been apt to regard international law as a projection of their own values, and for a mature acceptance by the newer States of responsibility for helping to uphold and promote the development of common legal standards which the interests of the whole world required.[1/] It was to the credit of the new nations that they did not ask for a total rejection of the "old" legal order. Indeed, article 1, paragraph 1, of the Statute of the Commission, which embodied the concepts of "progressive development" and "codification", established a nice balance between stability and change and thus properly reflected their aspirations. That balance had been facilitated by the expansion of the membership of the Commission from fifteen to twenty-one in 1956 and to twenty-five in 1961, having regard to the need for the Commission as a whole to assure representation of the main forms of civilization and the principal legal systems of the world.

4. The Commission had focused its work on practical matters concerning relations between States and had made considerable progress in that field. It was the Commission which had prepared drafts as the basis of such important multilateral treaties as the 1958 Geneva Conventions on the Law of the Sea, the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations. It had likewise prepared the draft articles on special missions which the Committee was currently examining with a view to a convention on the subject. Similarly, the United Nations Conference on the Law of Treaties had already made headway in drafting a major convention on the basis of a text prepared by the Commission. In addition, the Commission was currently dealing with relations between States and international organizations, the succession of States and Governments, State responsibility, and the most-favoured-nation clause. Thus there was every reason for optimism concerning the Commission's work, especially in view of all that had been achieved in a comparatively short time. It should also be stated that the Commission was ably assisted in its work by the Secretariat of the United Nations.

5. However, the record of acceptances of the Conventions in question was far from being equally

1/ See International Law in a Changing World (New York, Oceana Publications, Inc., 1963), "Law, Freedom and Welfare in Action for Peace", p. 5.

encouraging. For example, the four Conventions on the Law of the Sea and the optional Protocol of Signature concerning the compulsory settlement of disputes had received 33, 40, 25, 37 and 20 acceptances respectively. The Vienna Convention on Diplomatic Relations and the optional Protocol concerning the Compulsory Settlement of Disputes, 1961, the Vienna Convention on Consular Relations and the relevant optional Protocol, 1963, had received 65, 29, 27 and 11 acceptances respectively. As Mr. Ago had said in his report on the final stage of the codification of international law,[2] the position was one which could not be considered satisfactory. He nevertheless would like to point out that the effectiveness of codification conventions could not be assessed in terms of their acceptance statistics alone, since, as was well known, States not parties to such conventions generally considered that the formulations enshrined in them were the authentic expression of international law on the subjects concerned, and applied them in practice. To appreciate the situation better, it would be well to await the results of the study being undertaken by the United Nations Institute for Training and Research (UNITAR) on the factors delaying or preventing acceptance of multilateral treaties by States.[3]

6. The activities of the Commission were not confined to the formulation of specific draft conventions or articles. At various times, the General Assembly had requested the Commission to examine particular texts or to report on particular legal problems such as the rights and duties of States, the question of defining aggression and the formulation of the Nürnberg principles. However, since the Commission could not carry out all the work of codification, because of the mass of new legal developments arising in fields as diverse as outer space and the ocean floor, the United Nations had set up various legal committees and subcommittees to deal with such matters. That could not be regarded as an intrusion upon the Commission's sphere of activities, since such bodies helped to promote the progressive development of international law and its codification and thus supplemented the work of the Commission.

7. Mr. STAVROPOULOS (Legal Counsel) said that over the twenty years since its creation, the International Law Commission had done more for the progressive development and codification of international law than any other body in history. Other speakers would no doubt detail the Commission's contribution to international law. He would like first of all to speak of the jurists who might be called the founding fathers of the International Law Commission. In the first place, he paid a tribute to the memory of the original members of the Commission who had died, Messrs. Hudson, Brierly, Scelle and Pal. Next he would like to pay a tribute to the eminent jurists who had worked on the preparation of the Statute of the Commission and were still today associated with the work of the United Nations. Among them pride of place should go to the doyen of the International Law Commission, Mr. Amado, who had served in 1947 on the Committee on the Progressive Development of International Law and its Codification, established under General Assembly resolution 94 (I), and had been the representative of Brazil on the Sixth Committee when it adopted the Statute of the Commission; he had been Rapporteur at the first session of the Commission and had served on it ever since. Special mention should also be made of Mr. Bartoš, who was at present helping the Sixth Committee to examine the draft articles on special missions, which were largely the result of his labours, and Mr. Koretsky, the distinguished Vice-President of the International Court of Justice. The jurists in question had been assisted by Secretariat members, two of whom were now members of delegations to the General Assembly—Mr. Liang, who had been Secretary of the Commission for the first sixteen sessions and now represented China on the Sixth Committee, and Mr. Herrera, at present the leader of the delegation of Guatemala.

8. There was a close connexion between the International Court of Justice and the International Law Commission, from which twelve members of the Court had been recruited, namely, Mr. Koretsky, Mr. Alfaro, Mr. Córdova, Sir Gerald Fitzmaurice, Mr. Gros, Mr. Kojevnikov, Mr. Krylov, Mr. Lachs, Sir Hersch Lauterpacht, Mr. Padilla Nervo, Sir Benegal Rau and Mr. Spiropoulos. In addition, one member of the Commission, Mr. Ignacio-Pinto, also served on the United Nations Administrative Tribunal.

9. Many members of the Sixth Committee had proved their merits and been elected members of the Commission. That was true of Mr. Ruda, the present President of the Commission, Mr. El-Erian, a special Rapporteur of the Commission, and Mr. Yasseen, the Chairman of the Drafting Committee on Special Missions. He also welcomed the presence of Mr. Tsuruoka, Mr. Rosenne and Mr. Castren. Nor would he omit mention of Mr. Ago, Mr. Jiménez de Aréchaga, Mr. Castañeda, Mr. El-Khouri, Mr. François, Mr. Hsu, Mr. Sandström, Mr. Tunkin, Mr. Ustor, Mr. Verdross, Sir Humphrey Waldock and Mr. Zourek, all of whom had for many years made a valuable contribution to the work of the Commission.

10. In conclusion, he spoke of the diversity in the composition of the International Law Commission, whose sixty-four elected members had come from forty-three countries. He trusted that that diversity would be maintained in the future and that many members of the Sixth Committee would be called upon in due course to render their services to the Commission.

11. Mr. KLAFKOWSKI (Poland), speaking on behalf of the socialist countries, recalled the duty imposed on the General Assembly by article 13, paragraph 1 a, of the Charter. After the authors of the Charter had refused to give the United Nations the power to lay down binding rules of international law, the General Assembly had, under resolution 174 (II), established the International Law Commission and approved its Statute. At that point, the question of the relationship, between the Commission and the Sixth Committee had arisen. The delegations on whose behalf he was speaking felt that the relationship should be one of interdependence which would help to strengthen the role of international law in the world community;

[2] A/CN.4/205/Rev.1.

[3] See Official Records of the General Assembly, Twenty-second Session, Annexes, agenda item 45, document A/6875, annex I, paras. 59-69.

the Commission should direct its efforts mainly towards restating existing rules and formulating new ones, while the Committee should have primarily a policy-oriented function, as the Netherlands representative had put it so well at the 1032nd meeting. The relationship of interdependence to which he was referring was apparent each year when the Sixth Committee considered the report of the Commission.

12. At a time when the Commission was celebrating its twentieth anniversary, it could be said to have effectively accomplished the very difficult tasks which had been entrusted to it. The first of those tasks was to promote the progressive development of international law in the sense in which that expression was defined in article 15 of the Commission's Statute. Responsibility for making proposals in that regard rested with the General Assembly, the Members of the United Nations and certain organizations. The task in question was of particularly great practical importance, in that the progressive development of international law reflected all new political and economic concepts. The rules which were worked out must be formulated in such a manner that they could govern the international relations of all States, and all States were thus able to participate in international legal activities. The task of formulating the rules was undeniably a very difficult one, since they had to reflect not only the general principles of international law but also the extremely varied practice of States. He noted in that connexion that all the questions which the General Assembly had assigned to the Commission for study raised the problem of the progressive development of international law and that they were still the subject of frequent discussion between States.

13. The second task of the Commission was that of promoting the codification of international law—an expression which was also defined in article 15 of the Commission's Statute. The Commission could select the topics which were to be codified, but it had to give priority to any question with which the General Assembly requested it to deal. In the matter of codification, too, the Commission had done useful work by ushering in a new era in the history of international law—the era of multilateral codification conventions. Far from representing a mere compilation of legal rules, the task of codification upon which the Commission had embarked would provide what could truly be described as the corpus juris gentium of the present day.

14. In conclusion, he wished to pay a tribute not only to those who had taken the initiative in establishing the International Law Commission but also to all the members of that body, i.e., the sixty-four eminent jurists whose excellent studies and reports had so greatly assisted the Commission in performing its functions. Even though they served in their personal capacities, the members of the Commission represented the major forms of civilization and the main legal systems of the world; in addition, the enlarged membership of the Commission made it much more representative.

15. Mr. RUDA (Chairman of the International Law Commission) said that, at a time when the Commission over which he had the great honour of presiding was marking its twentieth anniversary, he was pleased to be able to review the work it had accomplished since its establishment. In an era characterized not only by rapid political and technological changes but also by the emergence of new concepts and ideas in the various spheres of culture, it was essential to pause briefly to study the balance-sheet of what had been done and of what remained to be done in the field of international law. In its constant effort to learn lessons from the past so as to prepare more effectively for the future, the International Law Commission had sought to maintain a balance between the two basic concepts set out in the United Nations Charter: the codification and progressive development of international law.

16. It was impossible to make a valid appraisal of the Commission's work without taking account of the fact that that work had been carried out within the larger context of the development of international law in the course of recent decades. It should be borne in mind that at the end of the nineteenth century the prospects for the development of international law had been very dim, and international relations had been regulated in much the same way as a primitive society. The prevailing view at that time had been that there was no will superior to that of the State and that the right to make war was nowhere subject to limitation. The timid efforts made at the Hague Peace Conferences of 1899 and 1907 had been intended to regulate only jus ad bellum and not jus belli.

17. By the beginning of the twentieth century, however, as a result of technological, social and political developments, international law had begun to assert itself; not only its content but also the doctrinal concepts on which it was based were to undergo profound changes. Those changes were reflected in greater interdependence between States and in the more rapid communication of ideas. In the social field, the world had witnessed what Ortega had called "the revolt of the masses",[4] while in the political field the concept of democracy was respected, if only in a formal sense, and the decisions of Governments were affected by world public opinion more than ever before.

18. Nineteenth century international law had quite obviously been unable to respond to those new situations, and it was therefore essential to draw up a balance-sheet for the purpose of determining the areas in which it had developed and the manner in which it had clarified existing concepts or undertaken to regulate new areas.

19. To begin with, international law no longer served to regulate exclusively the conduct of States. As Jenks had pointed out, its provisions were coming to apply to relations between individuals, international organizations and States. In the field of human rights, it had invaded areas from which it had been barred a century ago. A first step had been taken which would ultimately make it possible to ensure complete international protection of the economic, social, civil and political rights of the individual.

[4] José Ortega y Gasset, The revolt of the masses (New York, New American Library, 1950) (authorized translation from the Spanish).

20. In addition to making those changes in its basic concepts, international law had begun to regulate the new areas which had opened up as a result of technological progress. For example, rules had been formulated to govern international air traffic, and studies had been made of the problems resulting from the utilization of outer space, the peaceful uses of atomic energy, the exploitation of the petroleum resources of the continental shelf and the exploitation of the sea-bed and the ocean floor beyond the limits of national jurisdiction. So many bilateral and multilateral treaties had been concluded in the economic, financial and fiscal fields that some writers like Jessup and Katz were beginning to speak of a third branch of international law occupying an intermediate position between public international law and private international law.

21. The emergence of a great many international organizations, particularly the League of Nations and the United Nations, had served to encourage the speedy formulation of a set of rules governing certain highly important aspects of international political relations; the most significant advances had perhaps been made in the matter of working out a legal definition of war. The adoption of the United Nations Charter had made it possible to eliminate the defects which had previously characterized the Covenant of the League of Nations and the Briand-Kellogg Pact [5] and, for the first time, to vest the right to use force in a single international organization.

22. What conclusions could be drawn from the foregoing review of present-day international law and its recent development?

23. First of all, international law had not remained static or indifferent to changes in contemporary realities during the past fifty years; its rules applied to new areas with each passing day as international relations became increasingly ramified. International law had undergone not merely surface changes but deep-seated ones as well, perfecting its institutions and acquiring the characteristics of a highly developed body of law comparable to such older branches of law as private, public, criminal and constitutional law.

24. It was against the background of that dynamic and recent trend of international law that the achievements of the International Law Commission must be viewed.

25. Despite the careful preparations which had been made for it, the 1930 Codification Conference [6] had not accomplished any notable results. The only instruments which it had been possible to draw up at that time had been a Convention on certain questions relating to the conflict of nationality laws and three Protocols on the same topic. In 1946, when new efforts were about to be made to advance the cause of codification, Sir Cecil Hurst had warned, in a memorable statement, that a second failure would not only prevent any further efforts in the same direction but would render it almost impossible to persuade the man in the street that international law was a legal system capable of constituting the foundation of the law and order on which the new world was to be based. [7]

26. It was under those conditions, and at a time when the political climate had been unfavourable, that the International Law Commission had begun its work twenty years previously. The results of its efforts must be analysed in the light of two criteria. The first was a review of what had been accomplished, in order to see how far those efforts had been translated into positive law; the second was the drawing of the conclusions necessary for evaluating the principal characteristics of the codification process as it had evolved within the Commission itself.

27. He then briefly outlined the main action on each of the fifteen topics with which the Commission had had to concern itself since its establishment:

(1) In 1949, the submission to the General Assembly by the Commission of a draft Declaration on Rights and Duties of States;

(2) In 1950, the drafting by the Commission of a report on ways and means for making the evidence of customary international law more readily available;

(3) In 1950, the formulation by the Commission, in conformity with General Assembly resolution 177 (II), of the seven "principles recognized in the Charter of the Nürnberg Tribunal and in the judgement of the Tribunal.";

(4) Also in 1950, the preparation by the Commission of a report on the question of international criminal jurisdiction;

(5) In 1951, the submission to the General Assembly by the Commission of a report on the problems arising from certain reservations to the Convention on the Prevention and Punishment of the Crime of Genocide;

(6) Also in 1951, an examination by the Commission of the question of defining aggression;

(7) Also in 1951, the preparation by the Commission of a first draft code, followed in 1953 and 1954 by a second draft code, of offences against the Peace and Security of Mankind;

(8) In 1953, the preparation by the Commission of two draft conventions, one on the elimination of future statelessness, and the other on the reduction of future statelessness;

(9) From 1949 onwards, the codification of the law of the sea, a topic which engaged the particular attention of the Commission from the time of its establishment; on the basis of the Commission's final report, which had been submitted in 1956, a conference of plenipotentiaries had been convened at Geneva in 1958 and had adopted four Conventions on the Law of the Sea;

(10) In 1958, the preparation by the Commission of a set of Model Rules on Arbitral Procedure, which reproduced the main features of the first draft which had been submitted in 1953;

5/ General Treaty for Renunciation of War as an Instrument of National Policy, signed in Paris on 27 August 1928 (League of Nations, Treaty Series, vol. XCIV (1929), No. 2137).

6/ First Conference for the Codification of International Law, held at The Hague from 13 March to 12 April 1930.

7/ See International Law - the collected papers of Sir Cecil Hurst (London, Stevens and Sons Limited, 1950), p. 135.

(11) Also in 1958, the completion by the Commission of its final report on diplomatic intercourse and immunities, which had served as the basis for the deliberations of a conference of plenipotentiaries that had met at Vienna in 1961 and had adopted the Convention on Diplomatic Relations;

(12) In 1961, the adoption by the Commission of the final draft articles on consular relations, on which it had begun work in 1955 and which later served as the basis for the adoption, by another conference of plenipotentiaries, held at Vienna in 1963, of the Convention on Consular Relations;

(13) In 1963, the consideration by the Commission of the question of the participation of new States in general multilateral treaties concluded under the auspices of the League of Nations, a problem which the Commission had brought to the attention of the General Assembly at the time when the Commission had been considering the law of treaties and for which a satisfactory solution had been found through the adoption of General Assembly resolution 1903 (XVIII);

(14) In 1966, the adoption by the Commission of a set of draft articles on the law of treaties, the topic which had probably been the subject of more study and debate in the Commission than any other; the adoption of the draft articles had led later to the convening at Vienna of the United Nations Conference on the Law of Treaties, whose proceedings, which were to be continued up to the spring of 1969, were already proving to be very promising;

(15) In 1967, the completion by the Commission of its work on special missions, the draft articles on that topic being now considered by the Sixth Committee.

28. In addition to those fifteen topics, the Commission was proceeding with its work on the following topics: State responsibility, succession of States and Governments, relations between States and international organizations and the most-favoured-nation clause.

29. On the practical level, six Conventions which had represented the culmination of the Commission's work were at present in force, namely: the four Conventions on the Law of the Sea, the Convention on Diplomatic Relations and the Convention on Consular Relations. As it had been signed by only five States and ratified by only one, the Convention on the Reduction of Future Statelessness had not yet come into force.

30. When it was borne in mind that the Commission met for only a relatively short period each year, it could be realized that its achievements had been important and far-reaching and would inevitably exert considerable influence. Those achievements were marked by special features which he proposed now to describe in the concluding part of his statement.

31. In the first place, the Commission had never consented to sacrifice quality to speed. None of its decisions had ever been taken hastily; it had always allowed time for exhaustive debate and extensive study. It had had the advantage of being made up of experts acting in a purely personal capacity. They had always expressed themselves freely without concerning themselves with immediate political aims; their primary concern had been the interests of the international community as a whole. Their affiliation with different legal systems had provided a stimulus for a profound and fruitful intellectual approach.

32. Especially noteworthy had been the contribution of the Special Rapporteurs, who had unselfishly given of their time and of their intelligence in order to advance the work of the Commission. Their devotion and ability had made it possible for the General Assembly to receive detailed reports on all relevant aspects of the draft articles which had been drawn up.

33. With regard to its methods of work, the Commission had always given evidence of a high degree of flexibility within the framework of its Statute and of the United Nations Charter. Thus, it had not allowed its efforts to become paralysed by the distinction which had been established by legal doctrine between codification and progressive development of international law. Similarly, it had made a point of studying at great length the specific content of each principle of law without allowing itself to be distracted by sterile procedural considerations. The nature of the topics with which it had had to deal had considerably influenced its work. To the extent that those topics had been the object of established rules of customary law, the articles which it had drawn up had met with a more ready acceptance by States. That was evidence of the need for selecting the topics to be codified with the greatest care. It had now been established that the study of topics which in appearance were juridical but which had a high political content must not be assigned to the International Law Commission and that the most profitable results could be obtained by the Commission in connexion with topics which were far removed from all immediate political controversy.

34. The great merit of the Commission's work over the past twenty years had been the creation of a climate favourable to codification, despite the difficulties which the adaptation to new circumstances posed for international law as well as for international relations.

35. What mattered was for States to become gradually accustomed to the process of codification, which had become indispensable for firmly based international relations that would remain stable.

36. The experience of the past twenty years had furthermore shown that the most effective means of obtaining specific and acceptable results was to draft conventions embodying clear and precise principles that were in harmony with those contained in other instruments. That did not mean that the principles of customary law must be completely disregarded but rather that they must be reaffirmed so that they might provide a more solid basis for the conventions.

37. With regard to the substance of the Commission's achievements, it had been amply demonstrated that the acceptability of the articles which had been drawn up depended in large measure on the extent to which the characteristics of the present age were taken into account.

38. Lastly, the most important factor was co-operation by the States themselves in the process of codification. While undeniable progress had been made in the conclusion of general conventions codifying international law, the same could not yet be said of their

ratification by States. Some members of the Commission had expressed their concern in that regard at its twentieth session.

39. At the meeting of the International Bar Association at Dublin in July 1968 the Secretary-General of the United Nations had said that, in the last analysis, it was from the trust of peoples and nations in the rule of law that international law could derive its greatest strength; he hoped that trust could be gained.

40. Mr. FRANCIS (Jamaica), speaking on behalf of the Latin American group, paid a tribute to the International Law Commission and its work. He noted that the English-speaking countries of the Caribbean area had joined the Latin American group at a time when the original members of that group had already made an important contribution to the work of the Commission.

41. In opening the first meeting of the Commission in 1949, the representative of the Secretary-General had said that international law was like a great and ancient edifice, the doors of which were being opened so that it could be put in order, as it had to serve as a shelter for mankind. The Chairman of the Commission had said that he considered that the Commission's work should be based on history; it was impossible for a jurist to forget the lessons of history, and there was no doubt that in all their activities, the members of the Commission would be walking in its mighty shadow. Events had confirmed those views; he recalled the major works of the International Law Commission itself, among which the draft articles on the law of treaties had come to be regarded as the magnum opus.

42. As a subsidiary organ of the General Assembly, the Commission stood in fraternal relationship with the Sixth Committee, even though that Committee was, so to speak, its parent body. It should also be borne in mind that, in regard to its programme of work, the Commission remained the handmaiden of the Sixth Committee. The Commission's special position was also due in part to the fact that its members acted in their individual capacities and not as representatives of the Governments appointing them. The Commission also maintained useful contacts with regional juridical institutions and had enabled the participants in sessional seminars to benefit from its knowledge. All those factors had contributed to its success. However, that success was also due in large part to the human warmth which its eminent members had brought, together with their authority, to impersonal legal work. The members of the Commission were professors, advisers, diplomatic representatives or magistrates and they discharged their heavy responsibilities in addition to their own important national commitments. Their accomplishments were as much a credit to their wisdom, judgement and erudition as to their sense of dedication.

43. The degree of success which the Commission had achieved and the manner in which it had achieved it warranted certain conclusions regarding its future codification task. First, if the Commission was not the servant of States, it certainly was not their master, as the General Assembly's reaction to its draft on arbitral procedure had shown.[8/] Secondly, in stabilizing the foundations of international law, the Commission must be responsive to changes in terms of new ideas and be able to strike a proper balance between those two elements. In that respect, the Commission had shown positive signs of its awareness that the views of the developing countries had a valid place in the international law-making processes.

44. The twentieth anniversary of the International Law Commission was a fitting occasion for a tribute to all members, past and present, of that body, among whom there had been twelve Latin American jurists. It was a happy coincidence that one of them, Mr. Ruda, who was at present Chairman of the Commission, represented it in the Sixth Committee, in which Mr. Bartoš, formerly Special Rapporteur for special missions, also served as Expert Consultant. He wished particularly to congratulate Mr. Amado, who had acquired the unique distinction of completing twenty years of unbroken service with the Commission so that he was both doyen of the Commission and doyen of the Sixth Committee. He hoped that he would long continue to serve the Commission and Latin America.

45. Sir Kenneth BAILEY (Australia), speaking on behalf of the group of the Western countries, said that on the twentieth anniversary of the International Law Commission, it was fitting to recall the role of the United Nations in the sphere of international law. It was States alone which created international law, whether conventional or customary, and in that process the recommendations of public and private professional bodies could only play a secondary part. The importance of a concerted effort by States to extend the range and improve the substance of international law had been recognized, however, and Article 13 of the Charter of the United Nations had laid the foundations of a wholly new procedure, with emphasis on the progressive development of law. The establishment of the Commission, as a standing body of experts, to make systematic studies for the purposes indicated by the Charter and to recommend, through the General Assembly, appropriate action by States, marked an entirely new departure. There had ensued the most sustained effort in history for the development of international law. The Commission had been the dynamic centre, generating legal ideas, principles and rules, but it should be recognized also that Governments had rightly had an important role at every stage of the work of development and codification.

46. Reviewing briefly the additions to the operative content of international law made by the Commission in its first twenty years, he said that the pace of that work had been particularly remarkable, in that almost all of it had involved development as well as codification. It was true that ratification of the Conventions already operative was far from universal and that some highly important ratifications were still missing, but it must also be recognized that in many matters States were in practice acting in accordance with the Conventions. It could therefore be said that the influence of the Commission's

8/ For the last General Assembly action on the draft articles on arbitral procedure, see Assembly resolution 1262 (XIII) of 14 November 1958.

work was wider than the mere table of ratifications indicated.

47. That striking achievement would not have been possible without the dedicated and assiduous labours of the succession of able jurists who had served on the Commission since its establishment. Some, including Mr. Córdova, Mr. El-Khouri, Mr. Hudson, Mr. Krylov, Sir Hersch Lauterpacht, Mr. de Luna, Mr. Pal and Mr. Sandström, were no longer alive. Others had taken up new duties, in the International Court of Justice or in the Sixth Committee. Among those, the names of Mr. Ago, Mr. Castañeda, Mr. El-Erian, Sir Gerald Fitzmaurice, Mr. Ignacio-Pinto, Mr. Lachs, Mr. Rosenne, Mr. Ruda, Mr. Tsuruoka, Mr. Tunkin and Mr. Yasseen, and many others, were familiar to all. He wished to express to all of them the grateful appreciation and encouragement of the Western States, and their gratification that their spokesman for the celebration of the twentieth anniversary of the International Law Commission would be their eminent doyen, Mr. Amado, of Brazil, who combined the qualities of a great jurist with those of a distinguished diplomatist and man of letters.

48. What light could the experience of the Commission during its first twenty years throw on the conditions of future success? The topics which it was currently considering, which included State responsibility, the succession of States and Governments and the relations between States and international organizations, were of great importance and difficulty. In none of those fields was there at present a body of doctrine and practice sufficiently developed and stable for simple codification. Important divergences both in theory and in practice needed to be resolved, and the task of the Commission therefore was to a significant degree one of progressive development of international law. The Commission had not shrunk away from such responsibilities in the past, and of course would not do so in the future. However, there were limitations in that regard. The final word lay always with Governments. Though the members of the Commission sat as independent juridical experts, and though, in many of the matters referred to it, it had both the right and the duty to give the Governments a lead in the making of new law, the ultimate question must always be how much of a lead States would be ready to take. To ask that question was of course to raise issues not so much of legal as of political judgement. Yet the general acceptability of the Commission's recommendations might well depend on the correctness of its assessment. The General Assembly had profited greatly in the past from the Commission's wise hesitation to put forward highly controversial propositions, notwithstanding that a substantial majority could be found to support them in the Commission itself. The General Assembly—the great majority of States in the international community—would doubtless stand in need in the future of the same sureness of juridical and political judgement on the part of the Commission.

The meeting rose at 1.5 p.m.

Litho in U.N. 77601—May 1969—2,150