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Chairman: Mr. Abdullah EL-ERIAN
(United Arab Republic).

AGENDA ITEM 87

Reports of the International Law Commission on the
work of its sixteenth and seventeenth sessions
(A/5809, A/6009; A/C.6/L.557, L.558) (*continued*)

1. Mr. ROSENNE (Israel) said that his Government had already submitted written observations on each of the sections of the law of treaties prepared by the International Law Commission in 1962, 1963 and 1964 and he welcomed the completion by the Commission of the first draft of its codification of the law of treaties; he hoped that it would succeed in presenting the final draft to the Sixth Committee in 1966. The delegations of Israel to both the Fifth and Sixth Committees would support the programme of work in chapter IV of the Commission's report on its seventeenth session (A/6009), particularly the proposed extraordinary winter session in January 1966 and the extension of the regular session in summer 1966; he hoped the programme would receive the necessary endorsement from the competent organs of the General Assembly.

2. The delegation of Israel approved the Commission's confirmation at its seventeenth session (A/6009, para. 16) of its earlier decision to present the draft articles of the law of treaties in a form which could serve as a basis for a convention and also its decision to present the whole codification of the law of treaties in a single draft text (*ibid.*, para. 18).

3. If the Commission succeeded in this, the Sixth Committee would be faced at its twenty-first session with the last stages of the work and he considered, therefore, that the time had come for the Committee to turn its attention to the questions likely to be raised at a diplomatic conference of plenipotentiaries convened to draft the final text. Although it appeared to be the tendency of the General Assembly to refer codification drafts to a conference of plenipotentiaries, he did not in any way wish to anticipate any recommendations which might be made by the International Law Commission. Lest the Sixth Committee's debate at the twenty-first session of the General Assembly become too abstract, however, he suggested

that the Secretariat be asked to prepare for submission to that session a paper on the concrete questions likely to arise at a conference on the codification of the law of treaties, which was a vast and, in some respects, even unmanageable subject. Experience of codification seemed to show that each topic required its particular method of codification and that it would be unwise to generalize too much when speaking of a conference of plenipotentiaries. On examining the records of the codification conferences held in 1958,^{1/} 1961^{2/} and 1963,^{3/} he had been struck by the differences between each conference and the progressive evolution of their procedures, and in particular by the reference of the President of the Conference on Consular Relations in 1963 to "the problem caused by rules of procedure that were sometimes ill-adapted to the discussion".

4. He would like the Secretariat to begin examining such questions as the estimated length of a conference for the codification of the law of treaties, the method of work of such a conference, the advisability of dividing such a conference into committees as had been done in the United Nations Conferences on the Law of the Sea and the United Nations Conference on Consular Relations, the desirability or otherwise of further adapting the rules of procedure for codification conferences as they had evolved up to the 1963 United Nations Conference on Consular Relations, and the like. He had in mind a thorough study of the matter so that if the Secretariat were asked to submit a paper for the twenty-first session it would be in a position to do so without delay. It might even be desirable for the Secretariat to discuss the subject informally with the International Law Commission. In addition, the Secretariat should prepare the same type of reference guide to the draft articles in their final form which it had provided for all the previous codification projects.

5. He was pleased to note that the Commission had completed the first draft of the articles on special missions (A/6009, chap. III, B), and although his Government's comments on that draft were in preparation he wished to make two general comments.

6. Firstly, the delegation of Israel generally approved the Commission's decision to keep as close as possible to the language which already appeared in the 1961 Vienna Convention on Diplomatic Relations^{4/}

^{1/} United Nations Conference on the Law of the Sea, Geneva, 24 February-27 April 1958.

^{2/} United Nations Conference on Diplomatic Intercourse and Immunities, Vienna, 2 March-14 April 1961.

^{3/} United Nations Conference on Consular Relations, Vienna, 4 March-22 April 1963.

^{4/} See United Nations Conference on Diplomatic Intercourse and Immunities, *Official Records*, vol. II, *Annexes* (United Nations publication, Sales No.: 62.X.1).

or, where more appropriate, the language of the 1963 Vienna Convention on Consular Relations.^{5/} He greatly appreciated the personal sacrifice of the Special Rapporteur, Mr. Milan Bartoš, in agreeing to such a decision although his initial views on the matter had been somewhat different.

7. The second comment concerned the ultimate form of the draft articles. That question required very close attention on the part of the Commission, for while he agreed with the Commission's general decision to prepare those draft articles in a form which could serve as a basis for a convention, he was far from convinced that it would be feasible to complete the codification of the law in question in a conference of plenipotentiaries. He thought that the Commission should examine very closely any other possibilities which suggested themselves and he also hoped that at its second reading the Commission would succeed in condensing the material into fewer articles than at present, for although the Commission had been right, for the purposes of the first reading, to examine every side of the question independently and produce a separate draft article for each, that did not mean that at the second reading it could not reduce the number of such articles by using more direct cross-references to the earlier convention of 1961. Finally, the delegation of Israel did not consider that the topic of special missions need embrace what were referred to in paragraph 48 of the report on the Commission's seventeenth session (A/6009) as "high-level" special missions, although it appreciated Mr. Bartoš's pioneering work.

8. With regard to chapter V of the Commission's report, the delegation of Israel noted with particular interest the references (A/5809, paras. 43 and 49; A/6009, paras. 57 and 64) to co-operation with other bodies and the exchange and distribution of documents of the Commission, and it hoped that the competent organs of the General Assembly would approve the recommendations in those paragraphs.

9. The delegation of Israel wished to draw attention once more to the delays in the production of the two volumes of the Yearbook of the International Law Commission. It was true that there had been less delay in publishing volume I in the current year, but there was still room for improvement; it was also essential that volume II should be published as rapidly as possible, for it was just as important as volume I since it contained the basic material for the discussions and decisions of the Commission without which they could not be understood; moreover, volume II should be circulated in the same way as volume I. The delegation of Israel noted paragraph 69 of the report on the seventeenth session with interest, and although it considered that there was always room for improvement it wished to pay a tribute to the very high standards attained by the editorial staff of the Yearbook.

10. In conclusion, section F of chapter V, on the Seminar on International Law, was in some respects the most interesting part of the report on the seventeenth session. The delegation of Israel note with

satisfaction the Commission's observations in paragraph 71 regarding the organization and administration of the Seminar and the qualifications of the participants, and it was therefore prepared to support the suggestion made in paragraph 72 that the General Assembly might consider granting fellowships to cover the travel and subsistence expenses of nationals of developing countries who wished to attend such seminars and were qualified to do so. It hoped that the Sixth Committee would approve that recommendation and transmit it to the appropriate Committee of the General Assembly or other organ of the General Assembly. The Government of Israel wished to announce that it was prepared to defray the travel and subsistence expenses of one national of a developing country—to be selected by the Secretariat in accordance with whatever criteria it had for choosing such candidates—who wished to attend the Seminar but could not do so for financial reasons. That offer applied to the year 1966, assuming that a Seminar would be organized then, and the Government of Israel's future position would be determined by the development of the Seminars. Although that offer was completely unconditional, it was to be hoped that other delegations would find it possible to make similar offers.

11. Mr. AMADO (Brazil) recalled that, as a member of the Commission, he had opposed the view that the Commission should draw up codes, that is, scientific documents serving as models for States in their relations with other States, which would be, not peremptory, but entirely generic in character. He had contended that States made the law, and that the Commission's role was to work for States. The task of the members of the Commission, as intellectual agents and interpreters, was to define, draft, and codify; it was the representatives of States who laid down the law. The Commission had adopted that position, and accordingly had abandoned the idea of preparing codes—an idea so attractive to professors seeking ideal progress in the best of all possible worlds.

12. With respect to the law of treaties, the Commission had boldly prepared a text for adoption by States. It had thus shown its confidence in the present-day international community and its belief that States could agree to rules drawn up in a realistic spirit. The Commission had decided to give its draft articles the form of a single convention, in which States could agree on the rules that would govern the law of treaties from the first act of furnishing credentials in a negotiation to the last stage of interpretation of the text. That might well be a dream, but it was a dream that offered many practical possibilities.

13. In the past year, the Commission had made substantial advances in its work on the law of treaties. Difficulties had diminished, and a meeting of minds had been reached on several points. One question—the extent of the contractual element in treaties—had to some extent resisted the desire for unanimity and agreement. One view, favouring universality and multilateral conventions, contended that all States had the right to enter into all treaties. The other, based on the principle of the will of States, asked how States could be compelled against their will to enter into

^{5/} See United Nations Conference on Consular Relations, Official Records, vol. II, Annexes (United Nations publication, Sales No.: 64.X.1).

contracts with other States. The members would try again to see if it was possible to reconcile the two positions.

14. The Israel representative had mentioned the difficulties that an international conference might face in drawing up permanent rules concerning special missions. Those difficulties, however, were not insurmountable. There was already a body of general principles that could be extracted from the rudimentary practice—the practical rules applied in the daily activity of ministries—and there was substantial legal literature. Accordingly, there was ground for hope that a text on special missions might be added by an international conference to the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations. Special missions were an expression of the dynamism of the times and a response to urgent needs. The Commission's text should contain the living rules; it should come as close as possible to reality.

15. The Commission had already rejected the idea that a distinction must be made between missions of a political nature and technical missions. Political missions could have important technical aspects, just as technical missions could have a significant political character. On the other hand, special missions led by Heads of State, Heads of Government or Ministers for Foreign Affairs could not be treated on the same level as special missions of mere representatives. There might be a special chapter to give high-level special missions separate treatment.

16. The Seminar on International Law, organized by the European Office of the United Nations, had been a valuable innovation. His delegation was prepared to support any measure intended to promote and develop that project.

17. In a world threatened by the forces of destruction, the Committee's thoughts must be turned towards peaceful means of increasing the solidarity of mankind and strengthening the world community.

The meeting rose at 11.45 a.m.