United Nations
GENERAL ASSEMBLY
TWENTIETH SESSION
Official Records

SIXTH COMMITTEE, 841st MEETING

Tuesday, 5 October 1965, at 10.55 a.m.

NEW YORK

CONTENTS

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.559) (continued)

1. Mr. FARTASH (Iran) reviewed the historical development of the principle of collective security, which had led to general recognition of the need for multilateral treaties outlawing the use of force in the settlement of disputes between States. The League of Nations, which had laid the basis for the procedure of compulsory arbitration and the application of sanctions against aggressors, had failed to establish effective machinery and that task had fallen to the United Nations. Jurists the world over had looked to the new Organization to create a new international community governed by the rule of law and justice. They had been encouraged by the provisions of the Charter concerning the peaceful settlement of disputes and the establishment of the International Court of Justice and also by the emphasis on the need to promote international co-operation among States with different political systems and to work towards the codification and progressive development of international law. Unfortunately, the United Nations, after twenty years of patient efforts, had thus far proved incapable of reconciling the opposing ideologies and interests of States and of persuading them to resort to legal means rather than to the use of arms in settling the conflicts between them. Nevertheless, past setbacks should not deter the United Nations from pursuing its task of ensuring the codification and progressive development of international law, and the International Law Commission deserved the highest commendation for the constructive work it had accomplished during its sixteenth and seventeenth sessions.

2. The Iranian delegation was happy to note the progress made by the Commission in the codification of the law of treaties and hoped that the final draft of a single convention on the law of treaties would be presented to the General Assembly at its twenty-first session. He fully endorsed the view expressed at the 839th meeting by the Chairman of the Commission regarding the importance of ensuring continuity in the work of codification and accordingly supported the proposals for an extraordinary session of the Commission in the winter of 1966 and a two-week extension of its regular session in the summer of that year.

3. His delegation had also been pleased to note that relations had been established by the Commission with the Inter-American Council of Jurists and with the Asian-African Legal Consultative Committee, and hoped that it would enter into close co-operation with many other legal bodies throughout the world.

4. The Iranian delegation greatly appreciated the organization by the European Office of the United Nations of a seminar for students and young Government officials working in the field of international law. It was to be hoped that it would be the first of a series of such seminars with participants selected on as wide a geographical basis as possible in accordance with the aims of General Assembly resolution 1968 (XVIII).

5. Mr. CASTAÑEDA (Mexico) commended the International Law Commission upon the excellent work it had done on the codification of the law of treaties, and considered the comments from Governments a necessary basis for completing the draft of a single convention. He was grateful to the Chairman of the Commission for having explained that the absence of comments did not necessarily indicate a lack of interest or reservations on the part of Governments; on the contrary, it often indicated agreement with the texts as drafted by the Commission. When completed, the single convention on the law of treaties would represent a major achievement in international law and could be expected to carry as much authority as the Commission's previous work on the codification of the law of the sea.

6. A study of the successive revisions of the draft articles on the law of treaties indicated that substantial progress had been made in clarifying basic legal patterns and that a certain fundamental continuity had been maintained although the work had been directed by four different Rapporteurs. Moreover, the lengthy commentaries on the articles suggested that the Commission had only a tenuous and contradictory jurisprudence to guide it, for there were obvious ambiguities and doubts concerning the applicability of certain rules in specific cases.

7. It would be seen from articles 58 et seq (A/5809, chap. II, B) that the draft articles limited the effects of treaties to the parties. Since there was no rule of international law to support the expansive force of treaties, the Commission had duly concluded that the

future convention should limit the applicability of treaties to the parties, without prejudice to the possibility of binding third parties, provided that such was the intention of the parties and that the third party accepted the obligation. Moreover, nothing in the draft articles precluded the rules set forth in the treaty from being binding upon States not parties to the treaty if those rules had become customary rules of international law, that is, if new rules were created in future and generally recognized.

8. With regard to the Commission's decision to elaborate a convention rather than an expository code on the law of treaties, he recalled that there was nothing in article 23 of its Statute to indicate that priority should be given to one form over the other and that one of the Special Rapporteurs on the subject had been partial to a code on the grounds that it would have the same juridical value as a convention and the same effects. However, Mexico fully supported the decision that the draft articles should eventually constitute a single convention for the reasons given in the report (A/6009, para. 16).

9. His delegation also endorsed the Commission's approach to the question of special missions and its proposal to hold a winter session in 1966 and to extend its regular summer session in 1966 by two weeks in order to complete the work on the law of treaties. The draft resolution submitted jointly by Lebanon and Mexico (A/C.6/L.559) specifically approved the latter proposal in its last preambular paragraph. The draft resolution was similar in most other details to those adopted by the Committee in previous years concerning the reports of the International Law Commission.

10. Mr. DANIELS (Ghana) said that the members of the Committee who came from countries which had just rid themselves of colonialism were delighted with the Commission's achievements in respect of the law of treaties, for it was now gradually being realized that international law consisted of legal principles which applied to all nations, and not simply to a few favoured States. He liked to think that the time when colonial law masqueraded under the guise of international law had now gone for ever. Was it not a fact that most African countries had originally been colonized as a result of "gin-bottle" treaties concluded between colonial Powers and helpless African chiefs? And was it not a fact that whenever it suited the colonial Powers to do so, they elevated those "gin-bottle" treaties to the status of solemn international agreements, but when it suited their purposes to disregard them they reminded the luckless African chiefs that such treaties had no standing in international law? If any proof of that were needed it was provided in ample measure in Oppenheim's classic work on international law.[1/] British colonial history was full of examples of such unequal treaties, and although colonialism was now almost dead and buried, many provisions of those early treaties still ruled African countries from the grave.

11. Most of the border problems still plaguing Africa were the direct result of partition treaties in which colonialist Powers had agreed among themselves to dismember and share out African nations or communities without any concern for linguistic, racial or economic considerations. Thus, for example, there were French-speaking Togolese who had farms in Ghana yet lived in Togo, and there were Ghanaians who lived in Ghana yet whose farms were in the Ivory Coast. The border problems between Algeria and Morocco arose from the same cause.

12. If the law of treaties had been universal in scope and impartially applied in Africa, unity among African States would have been much easier to achieve. The reason he had laid so much stress on the evils of unequal treaties was in order to make the Committee aware that in its endeavours to establish a general convention on the law of treaties it must take the greatest care to see that that convention was truly universal in character and not just a collection of principles which favoured only the big Powers.

13. A treaty was admittedly a contract freely entered into by two independent States, but it was a fact of life that consent in the purely legal sense might not be the same thing as free and genuine consent in the moral sense. It was the Committee's duty to see that the law of treaties ruled out the "take it or leave it" attitude so frequently met in connexion with disadvantageous commercial contracts which developing countries were forced to sign in order to obtain vitally needed economic aid. Certain ex-colonial countries were reluctant to take their disputes to the International Court of Justice for settlement or to submit to arbitration, but that was not because they did not have confidence in the trustworthiness of the Court itself, but simply because the unequal treaties which they had been compelled to enter into in the past had undermined their whole confidence in international law.

14. The European Office of the United Nations was to be congratulated on having organized the Seminar on International Law referred to in paragraphs 70 to 72 of the International Law Commission's report on the work of its seventeenth session (A/6009). Seminars of that nature could go a long way towards helping the General Assembly to fulfil its obligation under Article 13 of the United Nations Charter to encourage the progressive development of international law. Outmoded ideas of international law had no place in such seminars, of course, and he was glad that the organizers of the 1965 Seminar had shown full awareness of their duties and selected useful and practical topics for discussion. He considered that the General Assembly should give its closest consideration to promoting and extending such seminars and he noted with gratitude the generous offer made by the Government of Israel to defray the expenses of a national of a developing country who wished to attend the next seminar.

15. In conclusion, in connexion with chapter V, A of the Commission's report dealing with co-operation with other bodies, he wished to remind members of the Committee that the Second Conference of Heads of State or Government of the Non-Aligned Countries, held at Cairo in 1964, had approved the establishment within the Organization of African Unity of a commission of jurists in accordance with article XIX

[1/] International Law, London, Longmans, Green & Co. Ltd., 1952.

of the Charter of OAU. The Commission's Statute affirmed its belief in the progressive development of international law, and he hoped the International Law Commission would soon take steps to establish contact with it.

16. Mr. DOUNGOUS (Chad) said that Chad was a small country which had only relatively recently entered the international scene. Members of the Committee might wonder what such a country could have to say regarding international law, which had been made by Europeans for Europeans, yet for his country it was a vital matter. He thought he could contribute something of value to the Committee's proceedings by speaking on it in his capacity as the representative of a young African country.

17. He was fully aware of the important role of international law in the settlement of disputes and the promotion of international co-operation in the present troubled world, and he had been most favourably impressed by the Seminar organized by the European Office of the United Nations as a means of helping developing countries to participate in the progressive development of international law. He fully shared Mr. Bartoš's views regarding the desirability of wide participation by both developed and developing countries in such seminars, and he had found the statements on that subject by the representatives of Brazil and, in particular, of Israel, at the 840th meeting, most encouraging and worthy of the careful consideration of other countries. Finally, he fully agreed with the International Law Commission's conclusions regarding the seminars, in paragraph 72 of its report on the work of its seventeenth session.

The meeting rose at 11.45 a.m.

Litho in U.N. 77601—December 1965—2,000