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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. ROGERS (United States of America) said that his Government considered the work of the International Law Commission of great importance in the task of building a workable peace, and knew of no more important piece of work which the Commission might have undertaken than the clarification of those basic contractual relations among States on which, in substantial measure, peace must rest. He commended the Commission for its significant contribution to the codification and development of the law of treaties. The draft articles on the law of treaties exemplified the Commission's consistently high standards.

2. As his Government had already commented on parts I and II of the draft articles, he would make no further observations. The Commission, in its second reading of part I, had decided to adjourn discussion of articles 8 and 9 and of the definition of the expression "general multilateral treaty" in articles 1 and 13 (see A/6009, para. 25); his Government continued to hold the views on those matters set out in its written comments submitted earlier.

3. His Government would, at a later date, submit written comments on articles 55-73 in part III (see A/5809, chap. II, B), which included some of the fundamental principles of treaty law; for the time being he would engage in preliminary discussion only with a view to eliciting comments by other delegations and informing the Commission and other Governments of his Government's tentative views. The United States reserved its final position on all the draft articles on the law of treaties until it had learned the views of other Governments and the Commission's consideration of all views expressed, and had given further study to the articles as a whole.

4. His delegation agreed with the Commission that the principle stated in article 55 was "the fundamental principle of the law of treaties" (ibid). That rule, while self-evident, must be included in the draft articles, for it was the foundation stone of every treaty structure, and without it the remaining rules would have little, if any, value.

5. Draft article 56 stated a rule which also was self-evident but which, in fact, had not always been followed. Paragraph 1 of that article not only would help in the correct determination of treaty rights and obligations in point of time, but also would remind the drafters of new treaties that treaties could be designed to have retroactive effect. The wording of paragraph 2, however, should be readjusted to take account of acquired rights which resulted from the operation of a treaty. That might be accomplished, in part, by replacing the words "unless the treaty otherwise provides" by the words "unless the contrary appears from the treaty". That change, although helpful, would not of itself be adequate to protect rights which might be acquired under a treaty and which were of a continuing character or which were given effect after the termination of the treaty.

6. The definition in article 57 of the territorial scope of a treaty seemed to be adequate as far as it went, but the inclusion of such a provision might raise questions whether the scope of a treaty must be limited to the territory of the parties. Treaties might apply to the high seas and other areas beyond the territories of the parties to them. In order to avoid misunderstanding, he suggested the addition to the draft article of a paragraph reading: "A treaty also applies beyond the territory of each party whenever such wider application is clearly intended."

7. The inclusion of the general rule in article 58, which was indeed "the fundamental rule governing the effect of a treaty upon States not parties" (ibid), was helpful. In article 59, however, the question of the time at which assent by the third party must be indicated should be decided in his Government's view, according to the circumstance in each case. A similar problem arose under article 60, but there it was far more important. Although that draft article could be helpful as a whole, further consideration of its over-all effect was required.

8. Article 61 required further study. As it stood, the rule could discourage the inclusion in a treaty of a provision which would confer some benefit upon a third State. Even though it appeared to be intended especially for the benefit of States not parties to treaties, it could have the effect of severely limiting rights which the parties to treaties might otherwise be willing to accord a third State.

9. There might be some question whether article 62 should be included in a convention on the law of treaties. Once rules set forth in a treaty had become so generally accepted that they extended beyond the

parties to the treaty, those rules were no longer subject to the requirements of treaty law. He recognized, however, that article 62, being in the nature of a disclaimer concerning the effects of articles 58 to 60, might be useful in avoiding an appearance of a conflict between those articles and customary rules of international law having their origin in treaties.

10. Article 63 was a useful clarification. Paragraph 5, which drew attention to the fact that a State could not divest itself of treaty obligations with one State by entering into treaty obligations with one or more other States, was of special importance. The draft article as a whole showed the need for more precise drafting of provisions in multilateral treaties which provided that, as between the parties thereto, they replaced and terminated earlier multilateral treaties. Such a later treaty could not justify action by its parties with respect to each other which was incompatible with obligations to parties to the earlier treaties that had not become parties to the later treaties.

11. The rule stated in article 64, para. 1, was of long standing and widely accepted, and the paragraph was a valuable clarification and reminder of a rule necessary for the effective maintenance of treaty rights and obligations. On the other hand, the rules stated in paragraphs 2 and 3 might lead some Governments to believe that, by severing diplomatic relations and creating a situation which made it difficult or impossible for treaty obligations to be fulfilled, they could avoid those obligations. In his Government's view, those two paragraphs could well be omitted, and other provisions relied upon for temporary suspension in the event of a supervening impossibility of performance. In that regard, he invited the Committee's attention to article 43, paras. 2 and 3.[1/] The over-all effects of the rules in article 64, paras. 2 and 3, required further study.

12. His delegation agreed fully with the rule in the first sentence of article 65. The exception specified in the second sentence, however, was a far-reaching digression from the rule and seemed to imply that a separate body of treaty law had been and could continue to be made and applied by international organizations. Of course, many useful procedural rules could and must be made and applied by international organizations; it was questionable, however, whether such rules alone could affect or determine the manner in which a treaty was to be amended. If the charter or constitution of an international organization embodied procedures for its own amendment or for the amendment of treaties concluded under the auspices of that organization, such an amendment was essentially by agreement of the parties, that is, the agreement reached at the time of the adoption of the charter or constitution. Similarly, where an international organization incorporated provisions for amendment in new treaties and agreements, amendment was still essentially a matter of agreement between the States which became parties. The exception as stated, however, was not limited to rules embodied in a charter or constitution or in the provisions of treaties formulated by the organization, and would apparently permit international organizations to establish procedures for the amendment of treaties without all the parties having had an opportunity to consider the procedures and register their agreement or objection and to change any of the rules on the amendment of treaties set forth in part I.[2/] His delegation accordingly suggested that the words "or the established rules of an international organization" should be deleted in article 65 and article 66, paras. 1 and 2 (A/5809, chap. II, B). The rule in article 66, para. 3, might be too severe, and in any event the paragraph needed further study. Its application would have the effect of discouraging States from signing an amendment if they were not certain that they could ratify it. Under such a rule a State would by signature be waiving treaty rights, a matter which normally required considerably more time and study than were involved in signing a treaty which was to be subject to ratification.

13. Article 67 set forth clearly the cardinal treaty principle that a State could not divest itself of its treaty obligations to one State by making a new treaty with another State. The rule should serve as a guide to parties contemplating a special treaty, and as a protection to States interested in maintaining their rights under an existing treaty.

14. Article 68, paras. (a) and (b), reflected widely accepted practice, but it was questionable whether any useful purpose would be served by paragraph (c), the substance of which was more properly considered a part of international law in general than simply a part of the law of treaties. The inclusion of that paragraph in article 68 might be misleading and create more problems than it would solve.

15. Articles 69 to 73 on the interpretation of treaties represented a reasonable compromise between many differing opinions about the appropriate procedure to be followed. But in the view of his delegation the weight to be accorded any given factor referred to in any of those rules depended upon the substantive effect of that factor and its bearing upon the true meaning of the treaty, and the order in which the rules were stated in the draft articles had no significance in that respect.

16. His delegation questioned the appropriateness and utility of article 72, para. 2 (b), and recommended its deletion. Where a version of a treaty was drawn up separately and the negotiators had had no opportunity to examine it, the element of agreement was lacking. It would accordingly be inappropriate to give permanency as a part of the law of treaties, to rules established by international organizations regarding the preparation of additional versions of a treaty.

17. His delegation found the substance of the rules stated in article 73 acceptable, but questioned the use of the word "texts" as referring to the several language versions in which the treaty was concluded. A treaty was more properly viewed as consisting of one text, even though that text was written in two or more languages. His delegation suggested, accordingly, that the heading of the draft article be replaced by one consistent with the heading of article 72,

1/ See Official Records of the General Assembly, Eighteenth Session, Supplement No. 9, chap. II, B.

2/ Ibid., Seventeenth Session, Supplement No. 9.

perhaps "Interpretation of treaties drawn up in two or more languages", and that paragraphs 1 and 2 should be revised so as to avoid the use of the word "texts".

18. With regard to other matters in the Commission's report on the work of its seventeenth session (A/6009), his Government favoured the Commission's recommendations concerning its programme of work and the organization of future sessions, and, more specifically, the holding of a winter session in 1966 and the possible extension of the 1966 summer session. His Government, however, was strongly opposed to the holding of meetings of United Nations bodies away from established headquarters where any additional expense to the Organization resulted, and accordingly would not favour holding the Commission's winter session away from Geneva unless it was clearly assured in advance that no additional expense would result.

19. His Government had not completed its consideration of the draft articles on special missions but expected to submit its comments in writing to the Secretary-General within the time-limit set by the Commission.

20. Mr. SAHOVIC (Yugoslavia) said that his delegation approved the reports of the International Law Commission on its sixteenth (A/5809) and seventeenth (A/6009) sessions and considered that in spite of their preliminary character the draft articles on the law of treaties and on special missions represented a considerable advance towards the final drafts. The draft articles before the Committee were worthy of its closest attention, because they were the result of a great deal of drafting and research work by the members of the International Law Commission done with great dispatch so as to have the final draft ready before the end of the Commission's term of office, and because both the new articles and the considerations influencing the Commission in their formulation required careful study. He complimented the Commission on the rapidity and high quality of its work, which had added a new chapter to international law and appealed to Member States to submit their observations on the draft articles as soon as possible so that the Commission could complete its final drafts.

21. He was not in a position to make any final suggestions but thought that some general comments would be in order.

22. The first question concerned the considerations which had led the International Law Commission to draft a single convention on the law of treaties. There no longer seemed to be any difference of opinion in the Committee regarding the desirability of a convention on the law of treaties, and in the light of the historical evolution of international law he considered that the adoption of such a convention would be an outstanding event which would throw new light on the procedures for entering into and enforcing international legal obligations; it would stress the increased importance of treaties as one of the most binding instruments in international law. The adoption of a single convention dealing with the conclusion, validity and application of international treaties would be a significant contribution by the United Nations to the establishment of the principle of the interdependence of all States in the struggle for peace and the establishment of continuing international co-operation in the political, economic and social fields.

23. He was deeply convinced that the codification of the law of treaties in the form of a single convention was an urgent requirement, but he wished to make it clear that in preparing a new draft the Commission should not abandon the principles which it had followed in the preparation of its first draft. The second draft, for example, unlike the first, restricted itself to agreements between States, and although there might be practical reasons for such a decision, it seemed to him that some changes should be made in articles 0, 2 and 3 (bis) (see A/6009, chap. II, B) which defined the scope of the articles. It might perhaps be preferable to replace those three articles with an article of a general nature which would not only cover the matters dealt with in the three articles in question but would also define the term "treaty" in greater detail than in article 1 (a) which defined the term in a way apt to lead to misunderstandings at a later date. He felt that it would be desirable for the International Law Commission to consider once more, and perhaps in greater detail, the question whether its decision to restrict the draft convention to treaties concluded between States could be justified without reserve, for in his opinion the increasing number of treaties concluded by international organizations and other subjects of international law ought to be taken into consideration also. At all events, the convention should cover treaties between States and international organizations, which were met with more and more frequently in international law.

24. As far as the need to extend the scope of the convention was concerned, he considered that since most of the rules relating to treaties concluded between States also applied to other treaties, it should be possible to state the specific rules governing treaties concluded by international organizations and other subjects of international law in one or two articles or chapters, without it being necessary to conclude additional conventions or add protocols concerning such treaties. The foregoing did not mean, however, that he did not appreciate the Commission's desire to keep its text simple and concise: on the contrary, he welcomed the steps taken to that end, particularly the new treatment of treaties concluded in simplified form and the drafting of the section regarding reservations to multilateral treaties. It was to be noted that the new provisions regarding ratification, represented a certain departure from the previous principle that treaties should be ratified save in exceptional cases, and it would be interesting to see how they were received in the comments to be submitted by States.

25. The Commission was rightly following the new attitude to the law of treaties which had grown up since the Second World War and was characterized by the simplification of procedures and the reduction of the importance of the formal element. It was therefore particularly desirable that it should retain the provisions already approved which constituted a

step forward in the progressive development of the law of treaties, for its object in codifying the law of treaties should be to draft as complete and as modern a convention as possible.

26. With regard to the draft articles on special missions (ibid., chap. III, B) efforts should be made to obtain the most complete comments possible from Governments so that the Commission could formulate the best possible rules. It would be impossible to solve all the questions regarding special missions simply by analogy with the articles of the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations, and the final result of the Commission's work on special missions would depend on the contributions made by Member States in the form of their comments on the draft submitted.

27. Regarding the other topics dealt with in the report, he supported the Commission's proposal to hold a winter session in 1966 and to extend the 1966 summer session if necessary; he would be very happy if the Commission could complete its work on the law of treaties and on special missions in 1966, for the final adoption of the Commission's drafts on those subjects would greatly facilitate future work for the codification and progressive development of international law and open up still greater avenues of activity to the Commission. He also fully shared the Commission's views on the need to improve its links with other bodies similarly occupied and to circulate its documents to them; he welcomed the Seminar on International Law held in Geneva in May 1965 and supported the proposal to make it a regular event.

28. The Yugoslav delegation agreed with the views in the draft resolution (A/C.6/L.559) submitted by the delegations of Lebanon and Mexico and would vote for it, although he reserved the right to submit any amendments or additions which he might later consider necessary.

29. In conclusion, he wished to emphasize that in spite of the difficulties met with by the Commission in its work, its achievements in the codification and progressive development of international law far outstripped the expectations of those who had viewed with scepticism the General Assembly's affirmation, in Article 13 of the Charter, that one of its main tasks was to encourage the progressive development of international law and its codification. Times changed, and what might have seemed like a utopian idea between the wars had become a reality of international life in spite of the difficulty and slowness with which it was being achieved.

30. Mr. VEROSTA (Austria) stressed the importance of formulating laws governing special missions. For thousands of years and in all centres of human culture such missions had been the only form of diplomatic intercourse. While permanent missions had developed in Europe only late in the Middle Ages, special missions had continued to play an important role in international relations from the dawn of history until the present day. During that time the rules applicable to special missions had grown extremely profuse. It was to the great credit of the International Law Commission that it had been able to formulate no less than forty-four articles on that topic.

31. The substantive work had now been completed and Governments had been invited to submit their comments by 1 May 1966. However, a question arose to which his delegation found no answer in the report of the International Law Commission on the work of its seventeenth session, namely the desirability of appending the draft articles on special missions as an additional protocol to the 1961 Vienna Convention on Diplomatic Relations or of embodying them in a separate convention (A/6009, para. 37). The original idea within the International Law Commission had been that the rules on diplomatic intercourse and immunities should on the whole be applied by analogy to special missions. However, the present draft rules on special missions seemed too bulky to be incorporated into an additional protocol to the Vienna Convention. He would welcome the Special Rapporteur's opinion on that point. Even if the draft articles were not incorporated in a convention, they represented a notable contribution to the codification and development of international law.

32. Finally, his delegation supported the Commission's proposal to hold a four-week winter session in 1966 and possibly to extend its regular summer session in that year by two weeks.

33. Mr. STANKEVICH (Byelorussian Soviet Socialist Republic) said that the task which lay before the Committee was the honourable and responsible one of consolidating a new and progressive form of international law which would outlaw aggression and the use of force and affirm the equality of large and small nations and the need for the peaceful coexistence of States with different social and economic systems.

34. Examination of the draft articles before the Committee made it clear that the work of the International Law Commission had progressed considerably, and that gave him great hopes for the future. In his opinion, the draft articles submitted for the consideration of the Sixth Committee represented both the codification of recognized and operative rules of the law of treaties and their progressive development on the basis of the Charter of the United Nations. That was undoubtedly a positive achievement of the International Law Commission, and would promote the establishment and consolidation of friendly relations between all States and nations. All the members of the Sixth Committee were well aware, however, that friendly relations could only be established and developed if the treaties themselves were strictly observed in an atmosphere of goodwill by all the parties: i.e., if the principle of pacta sunt servanda was observed.

35. He was by no means completely satisfied by all the articles approved by the International Law Commission and submitted for consideration by the Sixth Committee but it was impossible not to be aware that they were the fruit of much hard work, compromise decisions and mutual give and take. He therefore considered that the reports and draft articles submitted to the Sixth Committee, and indeed the whole work of the International Law Commission, deserved

understanding and support. It was essential that the Commission should complete its work within the period laid down by the General Assembly.

36. It was to be regretted that the Commission, in spite of considerable efforts, had not yet been able to submit agreed recommendations regarding a number of articles—particularly articles 8 and 9—in part I of the draft. In his opinion, it should be borne in mind in the final drafting of those articles that if the law of treaties was to be given a truly universal character multilateral treaties of a general nature must be open to all States. Those articles should not only permit but actually encourage States which had freed or were freeing themselves from colonialism and oppression to participate voluntarily in international agreements on an equal footing. Multilateral agreements usually governed matters which were of interest to all States, and their function was in some cases to establish and in others to develop generally accepted principles and rules of present-day international law which were binding on all States. That was why no State should be prevented from becoming a party to such treaties.

37. In the opinion of the Byelorussian delegation, the Commission had been right in deciding to unite all the parts of its codification of the law of treaties in a single convention, as they were all interdependent.

38. In the present-day world, suitable development of the law of treaties was one of the best ways of promoting international co-operation and settling disputes and problems arising in international relations. In view of the ever-increasing number of States which had freed themselves from the colonialist yoke, the growing importance of international agreements, and the impossibility of settling any problem of international life without previous international negotiations, it was essential that the work to establish a convention on the law of treaties should be completed within the set period. He was well aware of the difficulties which the Commission had overcome in the past and would have to overcome in the future in order to complete its work, but as the Latin proverb said, finis coronat opus, and, he would add, the completion of a great work also brought glory to those who had begun it and brought it to a successful conclusion.

39. His delegation welcomed the initiative of the European Office of the United Nations in arranging a Seminar on International Law, but in future such seminars should be carried out on the widest possible geographical basis with the participation of representatives from developing countries, who were the persons most directly interested in its work. It would also be desirable for the seminars to coincide with the sessions of the International Law Commission so that participants in the seminars could be addressed by eminent legal experts from the Commission. It was also essential that the lecturers at the seminars should be fully representative of the socialist, developing and capitalist countries. The topics discussed at the seminars should not be confined to those under consideration by the International Law Commission, but should be wider and embrace the latest ideas of international law.

40. In conclusion, he wished to reiterate that while the draft articles submitted by the Commission were not devoid of faults, which must be corrected, they nevertheless formed a suitable basis for the rapid completion of the Commission's work. There was no more important problem facing the world than that of obtaining general peace, and that could only be achieved in an atmosphere of friendship and mutual understanding among all States and nations. The importance of the problem was particularly obvious at the present time, standing out as it did against the background of the tragic events taking place in South Viet-Nam as the result of the aggressive actions of the United States, which were menacing the peace and security of the whole world. The adoption of a convention on the law of treaties and special missions would serve as yet another great appeal to reject aggression in favour of general co-operation and good neighbourliness.

41. Mr. SADI (Jordan) shared the hope already expressed by Mr. Bartoš (839th meeting) that in the future members of the International Law Commission would be able to devote more time to participation in the work of that body. He fully supported the Commission's decision to give the codification of the law of treaties the form of a convention. Such a decision was particularly valid now that so many new States had joined the international community and more were expected to do so in the near future. The formulation of a multilateral convention would provide such States with the opportunity to participate directly in the drafting of the legal provisions and thus place them in a more favourable position to abide by them.

42. His delegation did not support the preliminary conclusion reached by the Commission that the scope of the draft articles on the law of treaties should be confined to those concluded between States. Treaties concluded by international organizations should also be covered. The Commission itself had admitted that international organizations might possess a certain capacity to enter into international agreements and that such agreements fell within the scope of the law of treaties. His delegation supported the Commission's view that the provisions set out in parts I, II and III of the draft articles on the law of treaties should be codified in a single convention rather than in a series of related conventions (see A/6009, chap. II, para. 1, B). It also agreed with the Commission that the rules of diplomatic intercourse and immunities should in general be applied to special missions. Nevertheless, the codification of the law of special missions as an institution distinct from permanent missions must be studied carefully in the light of the Vienna Convention on Diplomatic Relations.[3]

43. His delegation fully supported the Commission's decision concerning co-operation with other bodies and also felt that legal institutions throughout the world should be regularly supplied with the documents published by the Commission.

[3] See United Nations Conference on Diplomatic Intercourse and Immunities, Official Records, vol. II, Annexes (United Nations publication, Sales No.: 62.X.1).

44. Mr. BARTOS (Chairman of the International Law Commission at its seventeenth session) said that his opinion on the question raised by the Austrian representative was set out in the lectures he had given at The Hague Academy of International Law[4/] and in the report he had submitted for the Commission's sixteenth session.[5/] There had initially been two views in the Commission. Some members had contended that there should be separate conventions on the four topics: diplomatic relations, consular relations, special missions and relations between States and inter-governmental organizations. Others had thought that the articles on special missions should form an additional protocol to the Vienna Convention on Diplomatic Relations. The Commission had left the question open. It was his opinion, as Special Rapporteur, that, in view of certain fundamental differences between special missions and diplomatic missions, the rules governing special missions could not be established simply by analogy to diplomatic law. Giving the articles on special missions the form of an additional protocol to the 1961 Vienna Convention on Diplomatic Relations would encourage excessive dependence on that analogy. He therefore preferred to have the articles on special missions take the form of a separate instrument, which would form one part of the code of modern diplomatic law.

The meeting rose at 12.5 p.m.

4/ Recueil des Cours de l'Academie de droit international, 1963-I, pp. 431-560.

5/ Yearbook of the International Law Commission, 1964, vol. II, document A/CN.4/166.

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