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**SIXTH COMMITTEE, 902nd
MEETING**

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Chairman: Mr. Vratislav PĚCHOTA
(Czechoslovakia).

AGENDA ITEM 84

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

1. The CHAIRMAN extended a welcome, on behalf of all members, to the Chairman of the International Law Commission, who would be able to assist the Committee greatly in its study of the lengthy and complex reports before it. He noted that the preparation of the draft articles on the law of treaties which the International Law Commission had just completed was the largest and most difficult task it had ever undertaken.

At the Chairman's invitation, Mr. Yasseen, Chairman of the International Law Commission at its eighteenth session, took a place at the Committee table.

2. Mr. YASSEEN (Chairman of the International Law Commission at its eighteenth session) said that the submission of the Commission's report on the work of its eighteenth session, far from being a mere formality, was of considerable importance for the progressive development of international law and its codification, since it was the jurists sitting in the Sixth Committee as representatives of States who would determine the direction and outcome of the Commission's work. The Commission had completed its work on the law of treaties on the very last day of its extended session, but, as was indicated in its report, it had also continued its work on special missions and had taken decisions on a number of general and administrative matters, including its agenda for the following year.

3. First, with regard to general and administrative matters, he pointed out that the Commission had included the following items in the agenda of its next session: special missions, relations between States and intergovernmental organizations, State responsibility, and succession of States and Governments. The reason that the Commission as now constituted had not hesitated to establish a provisional agenda, even though elections were to be held for all its seats,

was that it had wished to emphasize its permanence. Following that line of thought, it had deemed it advisable to take the opportunity to recall and reaffirm its 1953 decision that a Special Rapporteur who was re-elected as a member should continue his work on his topic, unless and until the Commission as newly constituted decided otherwise.^{1/} That procedure was necessary in order to ensure in so far as possible the continuity of the Commission's work; but the Commission would still have complete freedom of action at its next session with regard to its agenda and any other question concerning the organization of its work.

4. In the matter of co-operation with other bodies, the Commission had maintained its relations with the Asian-African Legal Consultative Committee and with the Inter-American Council of Jurists and its standing organ, the Inter-American Juridical Committee, and at its seventeenth session it had established relations with the European Committee on Legal Co-operation. Observers from those bodies had attended its last session, and it had itself been represented by its Chairman at the eighth session of the Asian-African Legal Consultative Committee, which had been held at Bangkok from 8 to 14 August 1966. He had found on that occasion that the Committee was very deeply interested in the Commission's work. Under its statute, the Committee dealt with all the topics which concerned the Commission, and at its last session it had appointed a special rapporteur to study the draft articles on the law of treaties prepared by the Commission so that at its next session it could determine the attitude it would adopt towards them.

5. In conjunction with the Commission's eighteenth session, the United Nations Office at Geneva had organized a second Seminar on International Law, which, in view of the wise choice of candidates, topics and working methods, should prove fruitful. He wished to stress that due consideration had been given to the remarks made on that subject in the Sixth Committee at the twentieth session of the General Assembly and to resolution 2045 (XX) and that a fairly large number of nationals of developing countries had been admitted to the second Seminar. Since it considered the continuation of such seminars to be very worth while as a means of strengthening the ties between the Commission and students of international law at both the theoretical and the practical level, the Commission had recommended that additional seminars should be held in conjunction with its sessions. He wished once again to express his appreciation to the United Nations Office at Geneva for the initiative it had taken.

^{1/} See Official Records of the General Assembly, Eighth Session, Supplement No. 9, para. 172.

6. Turning to the question of special missions, he explained that, since the Commission had been too much taken up with its work on the law of treaties, it had had to abandon its plan to prepare draft articles on that topic as well. It had directed its attention to the part of the Special Rapporteur's third report (A/CN.4/189 and Add.1 and 2) in which he raised certain questions of a general nature regarding special missions that had arisen from the comments by Governments and that it was important to settle as a preliminary to the later work on the draft articles. Thus, the Commission had considered the following questions: the nature of the provisions of the draft articles on special missions and, in particular, whether some of those provisions, without being considered to be *jus cogens*, might have such force that States would be unable to derogate from them, even by mutual agreement; the possibility of distinguishing between special missions of a political character and those which were of a purely technical character; the possibility of introducing into the draft articles a provision prohibiting discrimination; the advisability of including a provision on reciprocity; whether the instrument relating to special missions should be in the form of a separate Convention or an additional protocol to the 1961 Vienna Convention on Diplomatic Relations; the relationship between that instrument and other pertinent international agreements; the choice of the organ which was to adopt the instrument relating to special missions; the preparation of the preamble; the arrangement of the articles once they had been put into final form; the provisions concerning so-called high-level special missions; and, lastly, the adoption of an introductory article on definitions. For some of those questions, the Commission suggested solutions which it was submitting to the General Assembly for appraisal. In that connexion, he wished to repeat the request made in the Commission's report that States should forward their comments on the subject as soon as possible and, in any case, before 1 March 1967. The Commission was doing pioneer work on that topic and had great need of guidance in a field where there were virtually no general rules of positive law and where practice was far from consistent.

7. With regard to the draft articles on the law of treaties (see A/6309), he would not review the historical background of the topic once again. He would also refrain from detailed discussion of the various provisions contained in the draft, since the Commission had provided all the necessary information in its report. He would merely mention certain aspects of the draft and the steps that should be taken in order to complete the progressive development of the law of treaties and its codification.

8. The law of treaties was one of the most important topics of international law, because treaties had become the primary source of international law. Custom, since it was insufficiently universal and too slow to take form, could no longer provide the rules of law demanded by an international community that was constantly becoming larger and more diverse and, moreover, undergoing rapid change. Hence, the progressive development of international law and its codification were generally brought about by means of agreements, and the codification of the rules of law

governing agreements and treaties would help greatly to ensure progress in that field.

9. The Commission, once again maintaining its view in that connexion, had therefore rightly decided, in conformity with article 23 of its Statute, to recommend that the General Assembly should convene an international conference of plenipotentiaries to study the draft articles on the law of treaties and to conclude a convention on the subject. It had also recommended that the draft articles should be cast in the form of a single convention rather than a series of conventions. The law of treaties was an integrated system, the rules of which were so closely interrelated that it would be difficult to formulate them in a series of independent instruments.

10. The draft articles, far from being a simple work of codification in the strict sense of the term, also contained elements of progressive development; for no draft on the law of treaties would be viable unless it took account of the realities of contemporary international life and the changes which were taking place in the world. The question of deciding where codification ended and progressive development began would certainly raise some problems, but the latter would doubtless arise mainly in connexion with the application of legal rules and should not impede their formulation. It did not seem reasonable to oppose the inclusion of a given rule in a convention merely because it did not form part of positive international law and was therefore not yet binding.

11. The draft articles themselves were the result of a compromise through which the members of the Commission, who had widely varying legal and cultural backgrounds and represented different legal systems and forms of civilization, had made a joint effort to formulate rules which could be accepted by all for the good of the international community. In fairness to the Commission, therefore, a given provision should be criticized only in the context of the draft as a whole and bearing in mind the realities of a world that was admittedly better organized than ever before, but whose legal order, as compared to that prevailing in individual States, could still be described as primitive. The draft articles did not purport to be a perfect instrument, but it would be for States, and particularly the conference of plenipotentiaries, to rectify the omissions, remedy the shortcomings and correct possible errors. In particular, it was not essential for all the decisions adopted by a majority of the members of the Commission to receive a majority at the conference. However, the members of the Commission—jurists who were fully aware of the realities of international life and who, thanks to the Commission's methods of work, had been able to keep in touch with the opinion of States at each stage of their work—had succeeded in the past in preparing texts that had subsequently been adopted without change by the conferences of plenipotentiaries.

12. With regard to the implementation of its recommendation that a conference of plenipotentiaries should be convened to conclude a convention on the law of treaties, the Commission, concerned with fulfilling all the necessary conditions so that its draft would eventually become part of positive international law, wished the date of the conference to be chosen so as to

allow the necessary time for thorough study of the draft. Most of its members had felt that the conference could not take place before 1968 at the earliest, and a majority of those who had expressed an opinion on the subject had favoured dividing the conference into two sessions.

13. The Secretary-General's memorandum on the procedural and organizational problems involved in a possible diplomatic conference on the law of treaties (A/C.6/371) faithfully reflected the informal consultations in the Commission concerning the date of the conference, its draft rules of procedure and the possibility of dividing the draft articles between two committees. He would therefore not dwell on those questions and would merely express support for the proposal to depart from the rules of procedure of the General Assembly with regard to the limitation of the number of speakers on motions for division of proposals and amendments; for, in view of the nature of the draft articles, the result of a separate vote might affect other provisions in addition to those directly concerned. Furthermore, it would be useful, as the Secretary-General pointed out, to maintain in the rules of procedure of the future conference the rule included in the rules of procedure of the Conferences on Diplomatic Intercourse and Consular Relations, which stated: "The draft articles adopted by the International Law Commission shall constitute the basic proposal for discussion by the Conference" (A/C.6/371, para. 34).

14. He wished to pay a tribute to Sir Humphrey Waldock, Special Rapporteur on the law of treaties, who had approached his task in a way that had greatly facilitated the Commission's work, as the Commission had unanimously recognized in the resolution submitted by its senior member, Mr. Amado, and adopted at its 893rd meeting on 18 July 1966. Sir Humphrey Waldock's presence would, of course, be essential at any meeting or conference convened to take a decision

on the draft articles. He also wished to emphasize the important role played by the Drafting Committee, under the chairmanship of Mr. Briggs, particularly in the preparation of the final text of the draft articles.

15. In conclusion, he wished to recall that in carrying out its work the Commission was greatly indebted to the General Assembly, particularly the Sixth Committee, for the guidelines it had provided and to the Secretariat, particularly the Office of Legal Affairs, for its co-operation.

16. The CHAIRMAN, speaking on behalf of the Committee, thanked the President of the International Law Commission for his statement, which would greatly facilitate consideration of the draft articles on the law of treaties. He congratulated the Commission on its work, which had earned it the admiration and respect of all, and associated himself with the tribute paid to its Special Rapporteur, Sir Humphrey Waldock.

17. While stressing that there was no question of restricting delegations' freedom to comment on the substance of the draft articles or on any other matter they chose, he noted that in accordance with past practice the Committee would doubtless continue its consideration of the draft at its next session, taking account of the written comments submitted by Governments.

18. Replying to a question from the representative of Panama, the CHAIRMAN said that in accordance with past practice delegations could comment on the sections or chapters of the draft in which they were interested. The Committee did not, however, usually take a decision on the proposals submitted at that time; they were reported in the summary records and would be transmitted to the diplomatic conference, which would take the final decision on the draft articles.

The meeting rose at 11.45 a.m.