



Chairman: Mr. Zenon ROSSIDES (Cyprus).

AGENDA ITEM 88

Report of the International Law Commission on the work of its twenty-third session (*continued*) (A/8410 and Add.1 and Add.1/Corr.1 and Add.2, A/C.6/L.821)

1. Mr. KLAFKOWSKI (Poland) commended the International Law Commission for its excellent report (A/8410 and Add.1 and Add.1/Corr.1 and Add.2) on the work of its twenty-third session. The Commission had carried out the main task assigned to it by adopting the draft articles (see A/8410, chap. II, sect. D) on the representation of States in their relations with international organizations. The draft submitted by the Commission was very far-reaching, as it contained 82 draft articles, about 50 of which dealt with privileges and immunities. Relations between States and international organizations involved two aspects of diplomatic law, relating to the legal status and privileges and immunities of, respectively, international organizations and their staff, and representatives of States to international organizations.

2. The Commission had concentrated on the second aspect, since the first had already been more or less covered by previous conventions. The increase in the number of international organizations had led to an increase in the number of sessions of their organs and of conferences convened by the organizations. Consequently, States had found it necessary to send representatives to those meetings and to appoint permanent representatives to the United Nations and many other international organizations. Poland had sent a permanent representative to the League of Nations in 1920, and its example had been followed by many other States. By the time the United Nations had been founded, there was no longer any doubt that permanent missions could be most useful in co-ordinating co-operative efforts within the framework of international organizations.

3. It must be remembered that the statutes of organizations, as well as the conventions concluded under the latter's auspices or between States and international organizations, were limited to general and sometimes partial provisions concerning the legal status of representatives of States. Most such provisions were regulated by the internal legislation of the States concerned, particularly the host State. International practice had shown the inadequacy of that system, which had given rise to many difficulties. In that regard, he drew attention to the excellent study prepared by the Secretariat on the practice of the United Nations, the specialized agencies and the International

Atomic Energy Agency concerning their status, privileges and immunities.¹ It must be noted in particular that despite certain similarities, the legal position of representatives of States to international organizations differed from that of representatives of States accredited to another State. Therefore, neither the Vienna Convention on Diplomatic Relations of 1961 nor the Convention on Special Missions of 1969 was applicable to the question of the representation of States in their relations with international organizations. The draft articles drawn up by the Commission would therefore be of great practical value.

4. His delegation considered that the scope of the draft articles, as set forth in article 2, should be limited to organizations of universal character. The role of those organizations concerned almost all States and the question of the latter's representation to such organizations should be regulated by a multilateral convention accessible to all States. Although it would indeed be possible to apply such conventions to other international organizations, such as regional ones, such decisions should be left to the States concerned.

5. With regard to article 4, on the relationship between the draft articles and other international agreements, he wished to stress that the provisions of the draft articles were without prejudice to other international agreements in force between States and international organizations. He drew attention particularly to paragraph (5) of the commentary on article 4, which stated that the draft articles were not intended in any way to preclude any further development of the law in that area. The draft articles prepared by the Commission were, in a way, an elaboration of Article 105 of the Charter of the United Nations and of relevant provisions in the statutes of other organizations.

6. The provisions of article 7, on the functions of the permanent observer missions, were extremely important. The principles set forth in that article should be elaborated so as to establish that every non-member State had a right to establish a permanent observer mission to an international organization of a universal character.

7. His delegation endorsed article 80, which established the principle of non-discrimination as between States, since any such discrimination would be incompatible with the fundamental principle of the sovereign equality of States.

8. His delegation felt that the *bona fide* application of the provisions of the convention to be concluded at the proper time would ensure the elimination of all differences that

¹ See *Yearbook of the International Law Commission, 1967*, vol. II (United Nations publication, Sales No.: E.68.V.2), documents A/CN.4/L.118 and Add.1 and 2, p. 154.

might arise in the application and interpretation of the draft articles. He could therefore accept the substance of article 81; however, article 82, on conciliation, was unnecessary.

9. Turning to the question of procedure, he noted that the Commission at its 1146th meeting had decided to recommend that the General Assembly (*ibid.*, para. 57) should convene an international conference of plenipotentiaries to study the Commission's draft articles on the representation of States in their relations with international organizations and to conclude a convention on the subject. That would be the simplest procedure, but also the most costly. His delegation felt it would be possible to conclude a convention within the framework of the General Assembly by having the Sixth Committee prepare a final draft. That procedure had been followed with regard to the Convention on Special Missions. In that case the question of inviting non-Member States who were also concerned with the matter would, of course, arise. He felt that such a method of work would make it possible to avoid placing an undue burden on the budget of the United Nations.

10. With regard to the future work, his delegation noted with satisfaction the Commission's intention (*ibid.*, para. 123) of bringing up to date its long-term programme of work. Its report presented an excellent summary of its work to date, as well as of its future work programme. He also commended the working paper prepared by the Secretary-General, entitled "Survey of International Law",² which provided an excellent basis for the Commission's long-term work programme, as well as a most useful document for all States.

11. Mr. ROSENNE (Israel) emphasized the importance of the relationship between the Sixth Committee and the Commission. The very full reports which the Sixth Committee had traditionally submitted regarding its debate on the Commission's work had become an indispensable working tool for the Commission. His delegation hoped that if any changes were contemplated in established practices, they would not be the result of arbitrary administrative decisions, but would be fully considered by the Committee and, if necessary, by the Commission.

12. He noted from paragraph 39 of the Commission's report that it had established a small Working Group. He believed the Commission should feel free to continue adapting its procedures as circumstances required. It was important, however, to maintain the existing basis of work, which assured every member of the Commission the fullest opportunity to state his views on every matter. The Commission's conclusions should reflect the views of the majority of its members.

13. With regard to the draft articles, as his Government had stated in its note verbale of 5 January 1971 (see A/8410/Add.1 and Corr.1, sect. III of the observations of Israel), it favoured a broad formulation of facilities, privileges and immunities for the official representatives of States.

14. Uniformity of treatment was preferable to the many ambiguities and obscurities now encountered. The Vienna

Conventions of 1961 and 1963 on diplomatic relations and consular relations, respectively, and the Convention on Special Missions would provide an adequate and tested basis for the co-ordination and consolidation of present-day diplomatic law. He noted that the draft articles adopted by the Commission followed the same pattern for all the representatives of States with which it dealt; he was generally in agreement with that approach, but stressed the need for close examination before making any final decision. For example, it was somewhat surprising to see the concept of *chargé d'affaires ad interim* introduced in article 16, apparently because that was the pattern in bilateral diplomacy, while article 48, which corresponded to article 16, adhered more closely to the terminology normally used by delegations. Other detailed proposals too must be scrutinized closely.

15. He had no difficulty with the idea of convening an international conference of plenipotentiaries, although he hoped that every effort would be made to keep the cost to individual Governments and to the United Nations as low as possible. However, he had no strong feelings on the matter and could agree to any proposal acceptable to the Committee. He considered that all principal host States should be full participants in the final phase of codification. He shared the hope expressed in paragraph 58 of the report regarding the association of the United Nations itself, the specialized agencies and the IAEA in the final phase. The United Nations Conference on the Law of the Sea, held in 1958, might provide a suitable precedent. However, he agreed with the observations of the International Bank for Reconstruction and Development that it might not be feasible to devise a mechanism allowing the organizations to vote (see A/8410/Add.1 and Corr.1, para. 4 of the observations). It might be useful to follow the procedure adopted for the Law of Treaties and invite Governments and international organizations concerned to furnish further written observations before the relevant decisions were taken. That would be especially desirable since Governments had not had time to study in depth the Commission's report on its twenty-third session. Consequently, he would have no difficulty should the decision be postponed until the following year.

16. Chapter III of the report did not require any comment, except perhaps to say that the Commission should be formally invited to continue its work on the four topics mentioned in that chapter, in accordance with the existing General Assembly resolutions.

17. Chapter IV broke entirely new ground. He accepted the view which was implicit in that chapter, and particularly in the report of the Sub-Committee on treaties concluded between States and international organizations or between two or more international organizations (see A/8410, chap. IV, annex), that it would not be easy to transplant the provisions of the Vienna Convention on the Law of Treaties of 1969 to treaties concluded between States and international organizations or between two or more international organizations, academic opinions to the contrary notwithstanding. The Commission should be invited to continue working along the lines it had indicated.

18. Regarding paragraphs 119-123 of the report, he wished to reiterate his delegation's long-standing reserva-

² A/CN.4/245.

tions regarding the codification of the topic at that stage. It was not an urgent matter and its inherent suitability for codification by the processes of the Commission had not been demonstrated.

19. He noted with satisfaction that the Commission had undertaken a review of its long-term programme of work. He commended the "Survey of International Law," modestly called a working paper, submitted by the Secretary-General. It was probably one of the most remarkable documents of its kind prepared by the Codification Division of the Office of Legal Affairs of the Secretariat. He shared the view expressed in paragraph 125 of the report concerning the "Survey," and willingly endorsed the Commission's decision (see A/8410, para. 128 (c)) to request the Secretariat to give it wide circulation and distribution as a separate publication in addition to its inclusion in the *Yearbook of the International Law Commission*.

20. Forward-looking and progressive though it was, the "Survey" was at the same time a sombre and thought-provoking document. It repeatedly raised the question whether the only conceivable manner of codification was to be the production of draft articles intended to serve as the basis for an international convention to be concluded through a conference of plenipotentiaries or exceptionally through the General Assembly. As the scope of international law broadened and the urgency of contemporary requirements became more pressing, different techniques would have to be worked out. There seemed to be a connexion between the choice of future topics for codification and the process by which the codification of a given topic was to be achieved. He felt that the Commission's consideration of its future long-term programme would be facilitated if it had some idea, even if only in preliminary form, of Governments' views on that matter.

21. For such reasons and others, it would be generally helpful if Governments were invited to submit their observations on the "Survey" before the Commission undertook its review of its long-term programme. He therefore suggested that the resolution to be adopted at the end of the Sixth Committee's debate should invite Governments to make their preliminary views known by a convenient date, such as 1 May 1972. Those views need not be limited merely to the choice of subjects but could also cover the issue of the most appropriate way of completing the codification of the different topics.

22. His delegation had noted paragraphs 133 and 134 of the report, on the problems of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law. Several members of his country's foreign service had been victims of murderous, politically-inspired attacks and others had been subjected to common law violent assaults. His delegation had no hesitation in supporting the suggestion (*ibid.*, para. 133) that the Commission should be invited, as an important and urgent matter, to prepare a set of draft articles regarding such crimes as the murder and kidnapping of, and assaults upon, diplomats and other persons entitled to special protection under international law. Indeed, it was unfortunate that the Commission had not undertaken that task at its twenty-third session.

23. His delegation's attention had been drawn to the report of the Joint Inspection Unit on the programme of recurrent publications of the United Nations (A/8362). Since radical changes in recurrent publications of immediate concern to the Sixth Committee were being proposed, his delegation hoped that the Committee and, if appropriate, the Commission, would be given the opportunity to study the whole matter before changes were authorized. He hoped that some of the meetings being held in reserve for the current session of the Committee could be devoted to that problem.

24. He had read with great satisfaction paragraphs 164-169 of the report, on the Gilberto Amado Memorial Lecture. The Commission had found a very dignified way to keep alive the memory of the late Ambassador Amado.

25. He had also read with satisfaction paragraphs 170-176 of the report, on the Seminar on International Law, which was now an established feature of the United Nations Office at Geneva. When at the twentieth session his delegation had taken the initiative in the Sixth Committee (840th meeting) in the matter of making funds available to assist qualified persons to attend the Seminar, it had expressed the hope that other Governments would find it possible to make similar offers. It was now a source of gratification to note that the United Nations Office at Geneva had been able to establish a trust fund out of the voluntary contributions to the Seminar fellowships. He was happy to confirm that once again his Government would make available \$1,000 to defray the travel and subsistence expenses of a national of a developing country wishing to attend the Seminar, to be selected by the Secretariat in accordance with its established practice.

26. Mr. TAMMES (Netherlands) congratulated the Commission on having successfully completed its work on the draft articles on the representation of States in their relations with international organizations. It must be realized, however, that it would take some time for those articles to be accepted, in the form of a convention, by the international community. Until the convention came into effect universally, the régimes established under earlier international instruments would remain in force and would be binding on States which had not ratified the new convention. In that regard, article 30 of the Vienna Convention on the Law of Treaties,³ relating to the application of successive treaties, would provide guidelines for States to follow.

27. A question which had been much discussed in the Commission was that of the "functional" versus "representative" approach to the problem of protecting those who participated in the work of international organizations. For some time it had seemed that the Commission had been inclined to place too much emphasis on the principle of the representative nature of delegations and missions as acting for States in their sovereign capacity. Finally, however, a balance had been found, to the effect that permanent missions and permanent observers should be treated mainly on the basis of the representative principle while temporary

³ See United Nations Conference on the Law of Treaties, 1968 and 1969, *Official Records* (United Nations publication, Sales No.: E.70.V.5), document A/CONF.39/27, p. 289.

delegations and observers would be protected on the basis of the functional principle.

28. Another important topic dealt with in the draft articles was the question of preserving the independence of the international organization while safeguarding the security of the host State. Article 79, paragraph 1, protected the independence of the organization by providing that the rights and obligations of the host State and of the sending State should not be affected by non-recognition of the one by the other nor by the severance of relations between them. On the other hand, the interests of the host State were protected in article 75, which stipulated that, in cases where the criminal law of the host State was violated by a person enjoying immunity from jurisdiction, the sending State would be required either to waive the immunity of the person concerned or to recall him and terminate his functions. The Commission had wisely provided that the waiver, recall or termination should be decided by the sending State itself and that, in case of dispute, the consultation procedure provided for in article 81 might be invoked.

29. The consultation procedure established in article 81 was an eminently flexible system adapted to the needs of modern international organization. If a dispute proved to be incapable of settlement by the consultation procedure, it might be brought before the conciliation commission provided for in article 82, paragraph 1. In accordance with paragraph 5 of that article, the conciliation commission could request an advisory opinion from the International Court of Justice regarding the interpretation and application of the convention.

30. A new and valuable contribution to the codification of the international law in the area covered by the draft articles was contained in the annex to them concerning observer delegations to organs and to conferences. His delegation endorsed those features of the annexed articles which granted “functional” facilities, privileges and immunities to members of observer delegations.

31. With regard to future action on the draft articles, his delegation wondered whether the conference of plenipotentiaries envisaged in paragraph 57 of the report would be the kind of international gathering which would best serve the purpose. In his delegation’s view, the international organizations which as entities were distinguished from their membership should be given a recognized status at a conference where an important aspect of their affairs was to be dealt with.

32. As to the manner in which organizations could adopt the new convention, he felt that article X of the Convention on the Privileges and Immunities of the Specialized Agencies⁴ could provide a useful model. The procedure which could be followed was explained in detail in the observations of IBRD.

33. Mr. LUKASHUK (Ukrainian Soviet Socialist Republic) said that international law was becoming increasingly important and was assuming ever greater prominence in the work of all the Main Committees of the General Assembly.

⁴ See General Assembly resolution 179 (II).

Nevertheless, that had not led to any growth in the importance of the Sixth Committee. The Committee should not merely comment on the reports presented to it, which covered only a small part of the immense field of international law, but would do well to broaden its horizons and contribute to the actual work of codification. For example, the Sixth Committee might, basing itself on the relevant section of the Secretary-General’s report on the work of the Organization (A/8401), discuss the activities of the United Nations in the field of the codification and progressive development of international law and make suggestions as to the direction of future efforts. One specific problem to which the Sixth Committee could direct its attention at the present moment, as the representative of Poland had suggested, would be to discuss, without convening a conference, the draft convention on the representation of States in their relations with international organizations. The Sixth Committee’s experience with the Convention on Special Missions had shown that the Committee, working with the Secretariat, could make effective progress towards the preparation of a final draft convention. Moreover, in his delegation’s opinion, that could be done without adverse consequences to the other items on the agenda. Thanks to the work which had been done by the Commission, the Sixth Committee was in a position to complete the preparation of the draft convention, if it could find the will to do so.

34. The Commission had rightly based the draft articles on the representation of States in their relations with international organizations on the provisions of the Vienna Convention on Diplomatic Relations⁵ and the Convention on Special Missions, although there were certain significant differences. His delegation considered that the representatives of States to international organizations and delegations to organs and conferences should be accorded the full range of diplomatic privileges and immunities. That would help to avoid serious breaches of privilege of the kind that had recently taken place, assist representatives in carrying out their duties and contribute to the attainment of the objectives of the organizations concerned. In that connexion, he considered that paragraph 1 of articles 23 and 54, concerning the inviolability of premises, was open to abusive interpretation and should be brought into line with article 22 of the Vienna Convention on Diplomatic Relations.

35. The Commission had already produced important results, but it was essential that the work of codification should be speeded up. He therefore hoped that the Commission in its new composition would rapidly submit to the Sixth Committee for consideration a review of its long-term programme. The United Nations itself had made a considerable contribution to the codification and development of international law, and in that connexion he recalled the initiative taken by the socialist countries in preparing the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. Furthermore, his own delegation had been instru-

⁵ United Nations Conference on Diplomatic Intercourse and Immunities, 1961, *Official Records*, vol. II (United Nations publication, Sales No.: 62.X.1), document A/CONF.20/13 and Corr.1, p. 82.

mental in the adoption of General Assembly resolution 1505 (XV) concerning future work in the field of the codification and progressive development of international law. In that connexion he welcomed the working paper prepared by the Secretary-General entitled "Survey of International Law"⁶ which would be of great assistance to both the Sixth Committee and Commission in their work.

36. In connexion with the succession of States, the draft articles should clearly reflect the right of independent States whose peoples had fallen under the colonial yoke to decide which of the treaties concluded by the former metropolitan Power they wished to preserve and which to reject. That position had not yet been adequately reflected in the draft articles. Reference was made in paragraph 66 of the report to two kinds of new States, arising either from the separation of part of the metropolitan territory of an existing State or from the emergence of an associated territory to independence. It should be noted that the two cases were not identical, for instance in connexion with the question of financial responsibility, and should therefore be dealt with separately. He also wished to express his disagreement with the attempt to divide State property into the private domain and the public domain (see A/8410, para. 80). A former colony did not receive its population and territory by succession from the metropolitan State. In that connexion he recalled the principle: "*nemo plus juris transferre potest quam ipse habet*".

37. State responsibility was one of the cornerstones of international law, yet the Commission had so far devoted little attention to it. His delegation considered that special consideration should be given to responsibility for breaches of the basic principles of international law, such as crimes against peace, aggression, colonialism, the suppression of national liberation movements, crimes against humanity, genocide and *apartheid*.

38. Mr. PERSSON (Sweden) said that the national authorities of his country had so far had little time to examine the new version of the draft articles on the representation of States in their relations with international organizations and he could not therefore take a definite stand on certain provisions. As his delegation had stated at the twenty-fifth session (1187th meeting), the Swedish Government considered that the Commission had gone too far in the development of international law. In its view, the international community should restrict rather than enlarge the categories of persons enjoying privileged treatment in foreign countries, and also limit the extent of such privileges and immunities whenever that could be done without harm to the proper exercise of the tasks devolving upon the individuals concerned. Other Governments had voiced similar misgivings during the Sixth Committee's consideration of the draft which later became the Convention on Special Missions. That Convention, which accorded a very liberal treatment to special missions and their members, had so far been signed by only 14 States and there had been no ratification or accessions. The more complex Vienna Convention on the Law of Treaties, on the other hand, already had 30 signatures and nine ratifications

and accessions. It therefore seemed advisable to allow Governments time for reflection on the draft articles and the annex, by postponing a decision until the twenty-seventh session. Meanwhile, the Secretary-General could invite Governments and other interested parties to make final observations not only on the draft articles themselves but on the Commission's general approach to the question, which in most instances went far beyond the present state of international law. Those observations would indicate the viability of a future convention and the best method to follow for its adoption.

39. His delegation was not convinced of the need to establish a general rule placing permanent observer missions to international organizations on more or less the same footing as the permanent missions of Member States. Furthermore, the facilities, privileges and immunities extended to delegations to organs and conferences under the draft articles went beyond what was warranted by their functional needs. The draft articles in question granted wider facilities than those accorded under the Convention on the Privileges and Immunities of the United Nations and the Convention on the Privileges and Immunities of the Specialized Agencies, which were widely accepted and appeared to serve their purpose well. In his view, those two Conventions should set the maximum standard for facilities to be enjoyed by delegations to meetings. Moreover, the question of granting privileges and immunities to permanent missions and permanent observer missions within the meaning of article 1 of the draft articles, as well as to delegations to organs and conferences, was intimately linked to the legal status of those organizations. It therefore seemed wise to postpone a final examination of those provisions until the Commission had completed its study of the question of relations between States and international organizations. In that connexion, he welcomed the inclusion of new article 79, whose principles he endorsed.

40. With regard to the future handling of the matter, his delegation believed that the elaboration of the convention should be entrusted to a diplomatic conference rather than to the Sixth Committee. One obvious advantage of that procedure was that it would allow countries that were not Members of the United Nations to participate. If it was eventually decided to follow that course, the measures taken in connexion with the preparation of the Vienna Convention on the Law of Treaties would serve as a useful guide.

41. The topics of succession in respect of treaties, succession in respect of matters other than treaties and State responsibility were still under study, so members of the Committee would be able to make their observations at a later stage.

42. His delegation agreed with the decisions adopted by the Commission (*ibid.*, paras. 129-132) concerning the organization of its future work.

43. The Swedish Government would again provide the sum of \$1,500 for a scholarship enabling a student to attend the 1972 Seminar on International Law.

⁶ A/CN.4/245.