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**SIXTH COMMITTEE, 1257th  
MEETING**

Tuesday, 12 October 1971,  
at 3.10 p.m.

NEW YORK

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. AL-QAYSI (Iraq) congratulated the International Law Commission on its completion of the draft articles on the representation of States in their relations with international organizations (see A/8410, chap. II, sect. D), which were intended to serve as a basis for a draft convention rather than an expository code. The provisions of article 3 and 4 should dispel any apprehension that such an approach might inhibit the development of special arrangements. His delegation approved of the method followed by the Commission for consolidating the provisions concerning permanent missions and permanent observer missions (see article 5) and was particularly satisfied to see two separate articles on the respective functions of each type of mission.

2. With regard to the procedure to be followed for adopting the draft convention to be concluded, he believed that there was no need for undue haste and that Governments should be given ample opportunity to reflect upon the text. He was ready to support the Commission's recommendation in paragraph 57 of its report (A/8410), provided that every step was taken to keep costs as low as possible. The problem raised in paragraph 58 should be dealt with in the light of past experience with the aim of ensuring that the convention would meet with success in application.

3. He endorsed the approach taken towards the question of succession in respect of treaties (*ibid.*, chap. III, sect. A), which consisted in first identifying the basic principles applicable to new States in their purest form before considering the possible effect of special factors. He also approved of the Special Rapporteur's view on bilateral treaties, set forth in paragraph 69 of the report. It was to be hoped that the Commission would be able to proceed to a first reading of the draft articles on succession in respect of treaties, as a whole, at its next session.

4. The treatment of succession in respect of matters other than treaties (*ibid.*, sect. B) seemed generally satisfactory and he specially welcomed the pragmatic approach to the question of succession to public property, in particular the desire to gain recognition for the right of nations to their natural resources in connexion with the authority to grant concessions.

5. He looked forward to further progress in the Commission's work on State responsibility and the most-favoured-nation clause.

6. After welcoming the appointment of the Special Rapporteur for the important question of treaties concluded between States and international organizations or between two or more international organizations, he expressed support for the Sub-Committee's views, as set forth in the annex to chapter IV of the report. There had been general agreement in the Sub-Committee that the Vienna Convention on the Law of Treaties should be taken as the basis for research, that nothing must be done which could directly or indirectly weaken its effect, and that the Special Rapporteur should look for the broad questions of principle governing the particular case of international organizations, which the Vienna Convention did not have to take into account.

7. He expressed the hope that the progressive development and codification of the rules of international law relating to international watercourses—a topic of vital importance to his own country—would be treated with priority.

8. The working paper entitled "Survey of International Law"<sup>1</sup> prepared by the Secretary-General deserved the highest praise and he supported the Commission's determination to bring its long-term programme up to date. He also noted with satisfaction the continuing co-operation with regional bodies and warmly supported the recommendation of the Commission (see A/8410, para. 176) to pursue the practice of holding an annual Seminar on International Law.

9. Mr. HYVARINEN (Finland) noted that some progress had been achieved on the question of treaties concluded between States and international organizations or between two or more international organizations and that the question of the progressive development and codification of the rules of international law relating to international watercourses—a topic sponsored by his own country—had been included in the Commission's programme of work. His Government hoped that the task of collecting material on the latter topic would shortly be completed so that the Commission could begin work on it as soon as possible. The question of the long-term programme of work had rightly been postponed by decision of the Commission (*ibid.*, para. 128 (a)), pending the election of members of the Commission. His Government considered that it would be unwise to add many new items to the long-term programme since it would take several years to act on the topics already before the Commission. Furthermore, such questions as the

<sup>1</sup> A/CN.4/245.

recognition of States and Governments and the jurisdictional immunities of foreign States and of their organs, agencies and property, which the Commission had not yet had time to deal with, should be retained. The Commission should also return to the question of relations between States and international organizations. New items which could be taken up included unilateral international juridical acts and the question of making the protection of representatives of States more effective. His Government supported the continuation of the Seminar on International Law and would once again provide \$1,500 to enable a student to attend it.

10. His comments on the draft articles on the representation of States in their relations with international organizations were preliminary only and he reserved his Government's right to return to the matter at a later stage. The new draft represented a considerable improvement over the first version,<sup>2</sup> being shorter and clearer. In accordance with the wishes expressed by certain Governments, a new part had been added containing provisions dealing with observer delegations to organs and to conferences (see A/8410, chap. II, sect. D, annex), without which the draft would have been incomplete. Owing to lack of time there was no commentary on the new part, which nevertheless formed a useful basis. The draft had also been improved in substance, in particular by the exclusion of article 83 of the provisional draft<sup>3</sup> according to which a delegation to an organ or to a conference might represent only one State, which was contrary to the present practice and harmful to smaller countries. It had also been improved by the exclusion of the provision concerning offices of the mission elsewhere than in the organization's host country which appeared in articles 20 and 63 of the provisional draft.

11. The new provisions were all necessary and seemed well drafted. In that connexion he wished to draw special attention to articles 78, 79 and above all 82, which dealt with conciliation. Article 82 contained the necessary additions to article 81 and, without giving an absolute guarantee of solving disputes, would considerably increase the possibility of reaching an acceptable result, particularly if the conciliation procedure was flexible and appropriate in other respects, as seemed to be the case. He also supported the new provision added to article 75, forbidding persons enjoying privileges and immunities from interfering in the internal affairs of the host State.

12. With minor exceptions the draft appeared to grant the same facilities, privileges and immunities to observer missions as to permanent missions. It was possible that those rights and privileges, especially in respect of exemption from taxation and customs duty, were too extensive, but weighty arguments existed in favour of equal treatment for both groups of persons. Like permanent representatives, observers often stayed continuously for several years in the host country, and although their representative functions might be lesser, it was important that their relations with the organization should remain undisturbed. With regard to immunity from jurisdiction referred to in article 61, his

Government continued to think that an exception should be made with regard to traffic accidents taking place outside the exercise of official functions, and was pleased to note that the Commission concurred with that view.

13. He regretted the deletion from the draft articles submitted to the present session of former article 34 but realized it would have been unrealistic to retain it. Part of the deleted article had been added in present article 31, as paragraph 5.

14. He hoped that article 46, which restricted the size of delegations, would not be used by the host country in such a way as to impede those taking part in the work of conferences and organs of organizations or the activities of the conferences and organs themselves.

15. His Government supported the Commission's decision (see A/8410, para. 57) to recommend to the General Assembly the convening of an international conference with the ultimate aim of concluding a convention on the subject. It seemed appropriate to defer the final decision to the twenty-seventh session of the General Assembly in order to give Governments ample time to study the draft articles.

16. Mr. PINTO (Ceylon) said that the report of the Commission reflected significant advances in the five areas with which the Commission was currently concerned. The provisions of the draft articles on the representation of States in their relations with international organizations were set out in a logical and practical manner. His delegation welcomed the flexibility provided for in the draft, which recognized that the branch of law in question was still in the process of development. That was specifically acknowledged in article 4 of the draft and in paragraph (5) of the commentary on that article. He noted that although the title of the draft referred to representation of States in their relations with international organizations, the bulk of its provisions dealt with relations among States—principally as between the host State and others—with respect to their membership in an organization. It did not take up certain aspects of organization-State relationships, such as that regarding delegations responsible for negotiating with the organization itself.

17. He noted that the term "organ", as defined in article 1, applied only to bodies in which States were members, and did not exclude the somewhat exceptional case where an organ had both States and individuals as members. It was his understanding that the term would also cover the case of organs where members were elected by States, but served in their individual capacity.

18. The term "international organization of universal character" was defined as an "organization whose membership and responsibilities are on a world-wide scale", and was later contrasted with the term "international organizations other than those of universal character" in article 2, paragraph 4 (a). As he understood it, the idea of universality related to the membership of the organization rather than to any of its other features, such as the range of its functions. It was meant, he believed, to encompass inter-governmental organizations such as the United Nations itself, or specialized agencies which potentially could admit

<sup>2</sup> See *Official Records of the General Assembly, Twenty-third Session, Supplement No. 9*, p. 4; *ibid.*, *Twenty-fourth Session, Supplement No. 10*, p. 3 and *ibid.*, *Twenty-fifth Session, Supplement No. 10*, p. 5.

<sup>3</sup> *Ibid.*, *Twenty-fifth Session, Supplement No. 10*, p. 16.

all States to membership. However, it might be advisable to consider whether the term “universal”, which should include all States and could admit of no exceptions, would be applicable to any intergovernmental organization in existence, and consequently whether it might not be preferable either to substitute a different term or approach the definition in a different way altogether.

19. He noted that under article 3, the application of the proposed convention was to be without prejudice to any relevant rules of the organization or to any relevant rules of procedure of the conference. In accordance with paragraph (5) of the commentary on that article, the expression “relevant rules of the organization” was broad enough to include all relevant rules whatever their nature. He believed that was the correct approach and that it would leave each organization free to develop according to its own functional needs and its own political context. Such an approach also took account of the existence of organizations whose statutes and other basic documents made their rules incapable of supersession by extraneous agreements. That would appear to be the case of the IBRD Group. That degree of autonomy projected into the future as well, so that organizations might, even after the entry into force of the proposed convention, adopt rules that were not necessarily in conformity with it. He would not expect organizations to do that lightly, however. On the contrary, it was to be hoped that the convention would, to the extent feasible, become the basis for all new rules for such organizations.

20. He noted that under article 5, member States might establish permanent missions if the rules of the organization so admitted. Likewise, if the rules of the organization so admitted, non-member States might establish permanent observer missions. It would appear, therefore, that neither type of mission might be established as of right, but only if and to the extent that the organization consented to it in accordance with its rules.

21. With regard to articles 6 and 7, on the functions of permanent missions and permanent observer missions, his delegation did not think it was useful or necessary to distinguish between the functions of the two types of mission by stating that permanent missions could negotiate “with or in” the organization, while observer missions could only negotiate “with” the organization. Observer missions could legitimately count among their functions that of carrying out consultations or exchanges of views with States members of the organization.

22. Turning to article 8, he said consideration might be given to covering explicitly the very frequent case where a sending State accredited as head of a permanent mission a person who was head of a diplomatic mission to the host country or a neighbouring State. In paragraph (2) of the commentary on article 74, the Commission explained that such situations had already been covered by article 5, paragraph 3, of the Vienna Convention on Diplomatic Relations and article 17, paragraph 2 of the Vienna Convention on Consular Relations. However, in its report on the work of its twentieth session<sup>4</sup> the Commission had stated clearly that the draft articles were intended to serve

as a basis for a draft convention and constitute a self-contained and autonomous unit. If there was no argument of substance involved, it would be preferable to mention the right of concurrent accreditation in respect of diplomatic missions and missions to organizations.

23. He noted that privileges and immunities appeared to be dealt with along the lines of the earlier codifying conventions.

24. Careful consideration should be given to article 75. The last sentence of paragraph 2 seemed to introduce a far-reaching exception to the provisions of that paragraph, since it stated that those provisions should not apply in the case of any act that the person concerned had performed in carrying out the functions of the mission or the tasks of the delegation. It would appear that cases of grave and manifest violation of criminal law or interference in the internal affairs of the host State could not possibly fall within the “functions of the mission or the tasks of the delegation”. If that was so, then there was no reason to provide protection at that level. Furthermore, the sentence could introduce a subjective element that could cause difficulties, since an accused person would only have to show that the action in question had been taken on instructions from a sending State in order to escape the operation of the provision. While paragraphs (4) and (5) of the commentary on article 75 were to some extent reassuring, his delegation had doubts regarding the retention of the last sentence of article 75, paragraph 2, in its existing form. His delegation appreciated the need for a provision along the lines of article 79. Paragraph 2 of that article, which was particularly important, adequately reflected existing law and practice.

25. His delegation also welcomed the provisions of articles 81 and 82. He wished to point out, however, that the use of the term “chief administrative officer” to designate the agent of the organization to whom a power of appointment was given under article 82, paragraph 3, might not have a universal equivalence in all organizations. It might be wise to seek a more appropriate term. He also noted that the time-limit set in article 82, paragraph 1, might create confusion, since the statutes of the organizations might indicate a different period.

26. Certain questions arose regarding the assumption of obligations by international organizations to which the proposed convention would apply. It seemed clear that an organization would be directly charged with certain rights and obligations under the convention. Accordingly, it would be advantageous if the organizations in respect of which States proposed to apply the convention could participate in the preparatory work and become associated through the instrument with States parties to the convention. The system provided for in article X of the Convention on the Privileges and Immunities of the Specialized Agencies,<sup>5</sup> which had stood the test of time and operation, might serve as a model.

27. His delegation would be willing to support the Commission’s decision to recommend that the General Assembly should convene an international conference of

<sup>4</sup> *Ibid.*, Twenty-third Session, Supplement No. 9, para. 24.

<sup>5</sup> General Assembly resolution 179 (II).

plenipotentiaries to study the draft articles and to conclude a convention on that subject, if that decision won general acceptance in the Committee. The timing of such a conference might, however, present a problem. In view of preparations that were under way for a third conference on the law of the sea, he wondered whether a conference on the representation of States in their relations with international organizations could realistically be scheduled much earlier than the second half of 1974.

28. His delegation had read with particular satisfaction the four reports submitted by the Special Rapporteur on succession in respect of treaties, which were referred to in paragraph 62 of the Commission's report. As a country which had regained its independence in 1948 after almost a century and a half of foreign rule, it had a particular interest in that topic, as well as in the topic of State succession in respect of matters other than treaties. Since his delegation had not been able, due to lack of time, to examine in detail the 17 draft articles on succession in respect of treaties contained in the last three reports of the Special Rapporteur, it would reserve its comments on them for a future occasion. It did, however, wish to express its agreement in principle with the terms of article 6.<sup>6</sup> It also agreed with the position taken in article 3,<sup>7</sup> and with the general idea proposed in article 13.<sup>8</sup> He looked forward with interest to the Special Rapporteur's fifth report, which would deal with "dispositive", "localized" or "territorial" treaties.

29. The Commission's intention (*ibid.*, para. 123) to bring its long-term programme of work up to date was a timely one. The working paper of the Secretary-General entitled "Survey of International Law" was an extremely comprehensive and useful document.

30. His delegation noted with satisfaction the Commission's continuing co-operation with regional bodies with responsibilities in the legal field, especially the Asian-African Legal Consultative Committee, of which his country was a member.

31. The Seminar on International Law, now entering its eighth year, had clearly proved to be an unqualified success. However, participants from the developing countries still found it difficult, for financial reasons, to take advantage of the opportunities offered by the Seminar. While warmly thanking those Governments that had made scholarships available to participants from developing countries, he hoped that such a practice would be continued and expanded in the future.

32. Mr. MULIA (Indonesia), referring to the draft articles on the representation of States in their relations with international organizations, said that his delegation was pleased that the Commission had considered the status of observer delegations to organs and conferences. The draft articles on that subject would be carefully studied by his Government. His delegation also welcomed the Commis-

sion's decision (*ibid.*, para. 51) to concentrate on the representation of States in their relations with international organizations and to defer for the time being the consideration of the representation of international organizations to States. As for the status of the host State as a sending State, his delegation supported the position explained in paragraph 53 of the report.

33. His delegation supported the recommendation of the Special Rapporteur on relations between States and inter-governmental organizations contained in paragraph 179 of its first report<sup>9</sup> that the question of regional organizations should be studied at a later stage of the Commission's work. His delegation was of the opinion that regional organizations should be given wide latitude in determining the nature of their relations with Governments.

34. The Commission's recommendation to the General Assembly to convene an international conference of plenipotentiaries to study the draft articles with a view to concluding a convention deserved serious consideration. At an appropriate stage his delegation would make further detailed comments on the substance of the draft articles.

35. His delegation noted with gratification the Commission's decision (*ibid.*, para. 8) to include in chapter III of its report an account of the progress of work on topics currently under discussion. Among the topics discussed, his Government attached great importance to item 2 of its agenda (succession of States: (a) Succession in respect of treaties and (b) Succession in respect of matters other than treaties). His delegation felt that the opinion expressed by the Special Rapporteur for succession in respect of treaties in his previous reports concerning the need to co-ordinate the scope, language and provisions of his draft articles with those of the Vienna Convention on the Law of Treaties of 1969 deserved serious consideration. His delegation commended the Special Rapporteur for succession in respect of matters other than treaties for basing his observations on pragmatic rules drawn from State practice instead of purely theoretical studies. It was to be hoped that the Commission at its next session would have before it the reports of both Special Rapporteurs and would be able to make progress towards the completion of its work on State succession.

36. Regarding the question of treaties concluded between States and international organizations or between two or more international organizations, his delegation had noted with interest the report of the Sub-Committee reproduced in the annex to chapter IV of the Commission's report. It endorsed the Sub-Committee's recommendation that the study of that topic should be confined to written treaties and agreed that the Vienna Convention of 1969 would provide a firm basis for further research.

37. His delegation was happy to learn that the Commission had decided to review its long-term programme of work at its next session. The working paper prepared by the Secretary-General entitled "Survey of International Law" would be of great help to the Commission in its review.

38. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) said that the Commission had wisely decided to include

<sup>6</sup> See A/CN.4/224.

<sup>7</sup> See *Yearbook of the International Law Commission*, 1969, Vol. II (United Nations publication, Sales No.: E.70.V.8), document A/CN.4/214 and Add.1 and 2, p. 45.

<sup>8</sup> See A/CN.4/249.

<sup>9</sup> See *Yearbook of the International Law Commission*, 1963, vol. II (United Nations publication, Sales No.: 63.V.2), document A/CN.4/161 and Add.1, p. 159.

in the final version of the draft articles on the representation of States in their relations with international organizations the related topics of missions to international organizations, delegations to organs and to conferences, and observer delegations to organs and to conferences. The Commission had brought its work on the draft articles to a successful conclusion, taking into account the views of Governments and international organizations as well as the observations made by delegations at previous sessions of the Sixth Committee.

39. At an appropriate stage his delegation would comment in detail on the draft articles; at present, however, he wished merely to comment on a few articles which required modification and, in some cases, the deletion of unacceptable provisions. For example his delegation considered that article 21, paragraph 1, could be improved by amending it to read: "The host State shall facilitate the acquisition on its territory, in accordance with its laws, by the sending State of premises necessary for the mission."

40. His delegation, like others, could not accept the provision contained in articles 23 and 54 and article N of the annex to chapter II, section D, of the report that agents of the host State should be allowed to enter the premises of missions "in case of fire or other disaster". That provision represented an unwarranted departure from article 22 of the Vienna Convention on Diplomatic Relations<sup>10</sup> and constituted a direct violation of the inviolability of missions.

41. His delegation was also unable to accept the conciliation procedure outlined in article 82, which was so complicated that it would be scarcely workable in practice.

42. In his delegation's view, no distinction should be made between the treatment accorded, on the one hand, to missions to international organizations and delegations to organs and to conferences and, on the other, to observer delegations to organs and to conferences. In that connexion, a comparison of article H of the annex with articles 20 and 51 was instructive. Article H provided that: "The

host State shall accord to the observer delegation the facilities required for the performance of its task...", whereas articles 20 and 51 stipulated that the host State would accord to permanent missions and to delegations, to organs and to conferences "all facilities" for the performance of their tasks. There was unquestionably a substantive distinction between "facilities" and "all facilities", which in that case as in others worked to the disadvantage of the observer delegations. There was no reason why observer delegations should not enjoy the same legal status, privileges and immunities as fully accredited missions and delegations to international bodies.

43. A considerable amount of work would have to be done on the draft articles to make them more precise, eliminate needless duplication and redundancy and harmonize the legal terminology in related provisions of various articles. The final convention on the representation of States in their relations with international organizations must be firmly based on the relevant provisions of the Vienna Convention on Diplomatic Relations. Any provisions which were not in accordance with the norms of present-day international law and diplomatic practice must be deleted from the final convention, which should be open for signature to all States desiring to accede to it.

44. With regard to paragraph 57 of the Commission's report, which envisaged the convening of an international conference of plenipotentiaries to take further action on the draft articles, his delegation considered that there was no need whatsoever to convene such a conference. The Sixth Committee itself could discuss the draft convention—as it had done successfully in the case of the Convention on Special Missions—thereby realizing considerable savings for the Organization.

45. The Commission had many other important items on its agenda, including, in particular, the question of succession in respect of treaties. His delegation's position on that question was well known and, in the interests of saving time, he did not propose to elaborate on it. However, his delegation urged the Commission to accelerate the pace of its work on that question since it was of great interest to many countries, especially the developing countries.

*The meeting rose at 4.55 p.m.*

<sup>10</sup> See 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.