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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. SUMULONG (Philippines) said that because of the delay in issuing the report of the International Law Commission (A/8410 and Add.1 and Add.1/Corr.1 and Add.2), his delegation had been unable to study it sufficiently and would therefore confine itself to a few preliminary remarks.

2. The draft articles on the representation of States in their relations with international organizations (see A/8410, chap. II, sect. D) provided a good basis for a convention on the subject which would represent the culmination of the work of codifying diplomatic and consular law. He was happy to note that the original number of articles had been appreciably reduced by the Commission and that it had used the technique of drafting by reference and had combined some provisions relating to permanent missions and permanent observer missions, despite the differences between them.

3. Article 2 had been considerably improved by the addition of paragraph 4, which left it open to States to decide to apply the provisions of the draft articles in respect of international organizations other than those of universal character and to conferences convened or sponsored by such organizations. Articles 3 and 4 gave a certain flexibility to the uniform régime established in the draft articles by safeguarding the relevant rules of international organizations and regulating the relationship between the draft articles and other international agreements.

4. With regard to the provisions concerning facilities, privileges and immunities, his delegation considered that the Commission had been wise in applying the theory of extra-territoriality to the premises occupied by the mission or delegation, the "representative character" theory to the privileges and immunities of a permanent representative when he personified the sending State, and the "functional necessity" theory to the privileges and immunities of members of delegations to organs and conferences. Recalling the view expressed by his delegation at the twenty-fifth session (1192nd meeting) that since permanent missions and permanent observer missions had different functions, they should not be granted identical privileges and immunities, he wondered whether the relevant provisions of the draft articles now before the Committee did not place members of the two categories of missions on an equal footing.

5. He welcomed the formulation of article 79, paragraph 1 of which stated the principle that the rights and obligations of the host State and of the sending State should be affected neither by the non-recognition by one of those States of the other State or of its Government nor by the non-existence or the severance of diplomatic or consular relations between them, while paragraph 2 appropriately reflected existing law and practice by stating that the establishment or maintenance of a mission, the sending or attendance of a delegation or any act in application of the draft articles should not by itself imply recognition by the sending State of the host State or its Government or by the host State of the sending State or its Government.

6. His delegation endorsed the settlement procedure laid down in article 82 and took note with satisfaction of the provision in paragraph 5 to the effect that, if so authorized in accordance with the Charter of the United Nations, the conciliation commission might request an advisory opinion from the International Court of Justice regarding the interpretation or application of the articles. That provision expanded the very limited list of bodies in Article 96 of the Charter which could request the Court to give an advisory opinion, and it would undoubtedly give the Court a more active role in international relations.

7. With regard to the Commission's recommendation (see A/8410, para. 57) that the General Assembly should convene an international conference of plenipotentiaries to study the draft articles, his delegation considered that, in view of the Organization's extremely difficult financial situation and the expenses which such a conference would entail for participating Governments, it would be preferable to entrust that task to the Sixth Committee, which already had considerable experience in the matter.

8. It was unfortunate that the Commission had been unable to consider the items on succession of States, State responsibility, and the most-favoured-nation clause, all three being particularly important to new States and developing countries. He hoped that once the Commission had completed its work on the draft articles on the representation of States in their relations with international organizations, it would be able to devote adequate time to those questions. He was happy to note that a Special Rapporteur had been appointed to study the question of treaties concluded between States and international organizations or between two or more international organizations. Recent events had dramatized the importance and the seriousness of the problems of the protection and inviolability of diplomatic agents and other persons entitled to

special protection under international law, and his delegation was prepared to support any proposal to have the General Assembly request the Commission to prepare a set of draft articles on that question in 1972 at its twenty-fourth session.

9. He stressed the usefulness of the "Survey of International Law"[1] and endorsed the three decisions taken by the Commission (*ibid.*, para. 128) in connexion with its long-term programme of work, particularly its request to the Secretariat to circulate and distribute the Survey as widely as possible by issuing it as a separate publication, in addition to printing it in the *Yearbook of the International Law Commission* for 1971.

10. Mr. HAMBRO (Norway) said that in view of the delay in issuing the report of the Commission, Governments had not had time to examine the draft articles on the representation of States in their relations with international organizations with the necessary care. His delegation would therefore confine itself to making a few preliminary remarks, while reserving its right to revert to the matter at a later date.

11. The fundamental importance of the draft articles prepared by the Commission could be explained by the increasing role of multilateral diplomacy in the life of States, the many changes taking place in international relations as a result of scientific and technical development, and the steadily increasing responsibilities of intergovernmental organizations within the international community.

12. With regard to the substance of the text, his delegation felt that the scope of the privileges and immunities to be granted to State missions to international organizations should be determined in accordance with the theory of "functional necessity". In that connexion it would perhaps be wise, when drawing up the definitive text, to stress the notion of protection and facilities rather than that of privileges and immunities, which would appear to be somewhat old-fashioned.

13. While appreciating the relevance of the remarks made by the representative of the Philippines regarding the financial implications of an international conference of plenipotentiaries to study the Commission's draft articles and to conclude a convention on the subject, his delegation supported the Commission's recommendation that the General Assembly should convene such a conference.

14. He stressed the usefulness of the document entitled "Survey of International Law", which should be invaluable to the Commission in its task of drawing up a working programme based on the international community's current needs. His Government attached great importance to the Seminar on International Law held at Geneva and would, as in previous years, provide a scholarship of $US1,500.00 for a participant in the forthcoming Seminar.

15. Mrs. SLAMOVA (Czechoslovakia) said the Commission had acted wisely in devoting its main efforts, at its twenty-third session, to putting the finishing touches on the draft articles on the representation of States in their relations with international organizations.

16. Her delegation was happy to note that the Commission had not established too clear a distinction between permanent missions and permanent observer missions and, in particular, that it had established parallel provisions regarding the privileges and immunities to be granted to members of the two categories of missions. She felt, however, that it would have been preferable to state explicitly in the draft articles that any problems presented by the two types of missions should be approached from the same viewpoint.

17. With regard to the provisions of the draft, article 5, paragraph 2, seemed to her excessively restrictive; it might enable States members of an international organization to prevent non-member States from taking the opportunity of establishing permanent observer missions to the organization in question. In her view, it would have been preferable to lay down the principle that any State which was not a member of an international organization might establish a permanent observer mission to that organization if the member States had the right to have permanent missions. Similarly, the privileges and immunities conferred on the two categories of mission should be the same; article 19, paragraph 2, however, did not confer on the head of a permanent observer mission the right to the use of the flag and emblem of the sending State on his residence and means of transport. The distinction drawn in article 20 was likewise unjustified, inasmuch as the host State was obliged to accord to the permanent observer mission only "the facilities required" for the performance of its functions and not "all facilities", as in the case of the permanent mission; in her delegation's view, the treatment accorded to the two types of mission should be identical in that respect also.

18. Article 23, paragraph 1, was not identical with the article 22, paragraph 1, of the Vienna Convention on Diplomatic Relations,[2] and her delegation did not see why the protection accorded to permanent representatives to international organizations should be inferior to that accorded to permanent representatives to Governments. It welcomed article 80, which was fully in accordance with the principle of the sovereign equality of States.

19. With regard to the provisions concerning delegations to organs and to conferences referred to in part III of the draft articles and observer delegations to organs and to conferences referred to in the annex to the draft articles, her delegation felt that there again they should be as close as possible to the provisions concerning permanent missions and permanent observer missions.

20. The Sixth Committee should be entrusted with the task of preparing a convention based on the draft articles of the Commission; the text could then be submitted to the General Assembly for adoption and opened for signature to all States without discrimination. Regarding the Commission's long-term programme of work, she believed that priority should be given to the questions of the succession of States, State responsibility and the most-favoured-nation clause.

[1] A/CN.4/245.

[2] 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.

21. Mr. GONZALEZ LAPEYRE (Uruguay), referring to Chapter V, section D, of the Commission's report, concerning the problems of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law, noted that the Commission had been unable to consider that item at its twenty-third session; it had, however, decided (*ibid.*, para. 134) that if the General Assembly requested it to do so it would prepare a set of articles on that important subject at its 1972 session. His delegation fully shared the view expressed by the Danish delegation, which at the 1258th meeting stressed the urgency of that question and hoped that the General Assembly would be asked to invite the Commission to prepare draft rules on the subject. It was with that end in view that his delegation had prepared a draft convention which might serve as a working paper for the Commission.[3]

22. His delegation's position was based on a number of considerations. Firstly, in his address to the General Assembly at the current session, the Minister for Foreign Affairs of Uruguay (1941st plenary meeting) had stressed the importance of General Assembly resolution 2645 (XXV) condemning aerial hijacking or interference with civil air travel, as a result of which the diplomatic Conference convened at The Hague in December 1970 had adopted the Convention for the Suppression of Unlawful Seizure of Aircraft which could constitute an effective instrument for international co-operation in the prevention and suppression of such unlawful acts. On the same occasion, the Minister had expressed regret that other forms of crime had not been dealt with equally effectively, and he had referred in particular to acts of terrorism and crimes committed against diplomatic and consular agents and other international officials. While the General Assembly of OAS had adopted on 2 February 1971 a Convention on international co-operation in that area, the United Nations did not appear to have shown the same degree of interest in the subject.

23. It should be pointed out further that, although that particular type of international crime had always existed, new forms of aggression against diplomatic and consular agents had recently emerged as a tool of subversion. The kidnapping of diplomats had been used for the purpose of blackmail or in order to put pressure on the host State or on certain economic groups within that State.

24. To stress the gravity of the problem, he recalled the numerous kidnappings of diplomatic agents which had been committed for that purpose in recent years: in some cases the victims had in the end been murdered; in other cases they had eventually been released, but, in many instances, that had been only after the Government of the host State had acceded to the demands of the kidnappers, more often than not releasing political prisoners.

25. The Uruguayan Government had always complied with the international norms conferring special protection status on certain individuals, in particular article 29 of the Vienna Convention on Diplomatic Relations[4] and article 40 of the Vienna Convention on Consular Relations,[5] and the relevant provisions of the agreements relating to the privileges and immunities of international organizations. It considered, however, that from the viewpoint first of all of the interpretation of those texts, the host State's duty to provide special protection did not constitute an unrestricted obligation; the most widespread theory of diplomatic law in fact acknowledged the existence of certain limitations in that regard, deriving particularly from the principle of the separation of powers. No legal system could agree to yield, in virtue of the obligation of special protection, to all the demands that terrorists might make in exchange for their hostages.

26. From the viewpoint of the functions on which diplomatic inviolability and the obligation of special protection were based, it was clear that the principle of negotiation of any kind with the terrorists responsible for a kidnapping must be rejected. The mere fact of acceding to their demands could only encourage such acts, which would eventually increase to the point where the persons whose protection was desired became a form of exchange currency.

27. The position adopted by the Uruguayan Government was shared by important mouthpieces of world public opinion; he quoted editorials of 11 August 1970 in *The Times* and the *Daily Telegraph* respectively, both of London, which stated that the only solution to be adopted in the case of political kidnapping was a concerted refusal by all Governments to yield to blackmail.

28. Nevertheless, his delegation respected the decision of the Governments of other States which had adopted a different line of conduct, in view of the humanitarian considerations which had inspired them and the principle of the internal jurisdiction of each State. For those reasons, the draft Convention prepared by his delegation expressly recognized the latter principle, while otherwise following, with minor variations, the broad lines of the Convention adopted by the General Assembly of OAS on 2 February 1971.

29. Mr. CAMINOS (Argentina) recalled that the Commission at its recent session had devoted itself mainly to the preparation of the draft articles on the representation of States in their relations with international organizations. The Argentine Government would state its views at a later stage when it had studied the draft in detail. The draft articles and the annex thereto constituted an initial major step towards the codification of the rules of international norms, most of which were currently governed by special conventions. Multilateral diplomacy was a relatively new field, and the Commission's draft had had to reflect carefully the differences between the proposed new practice and traditional bilateral diplomacy.

30. The Commission had had to ensure that its draft was in conformity, in respect both of terminology and of the substance of the rules themselves, with the provisions of the Vienna Conventions on diplomatic relations and on consu-

3 Subsequently circulated as document A/C.6/L.822.

4 See foot-note 2.

5 See United Nations Conference on Consular Relations, 1963, *Official Records*, vol. II (United Nations publication, Sales No.: 64.X.1), document A/CONF.25/12, p. 175.

lar relations, the Convention on Special Missions set forth in the annex to General Assembly resolution 2530 (XXIV), all of which came within the field of bilateral diplomacy, and the Vienna Convention on the Law of Treaties of 1969. The task of co-ordination involved was becoming increasingly difficult as the process of codification and progressive development of international law under United Nations auspices advanced.

31. His delegation endorsed the initiative taken by the Commission in giving headings to the parts, sections and articles of the draft.

32. With regard to disputes, article 81 had to do with consultations between the sending State, the host State and the organization, whereas article 82, which supplemented it, established conciliation machinery with a view to settling disputes not disposed of as a result of such consultations. In connexion with article 82, his delegation thought it would be necessary to examine very closely the powers invested in the organization and in the "chief administrative officer of the organization", and especially in the proposed conciliation commission itself, and the option of the latter to request an advisory opinion from the International Court of Justice.

33. With regard to the recommendation of the Commission that the General Assembly should convene an international conference to study the Commission's draft articles and to conclude a convention on the subject, the Argentine delegation approved the recommendation in principle and found the arguments put forward in that respect by the French delegation at the 1258th meeting very much to the point. It had, however, not made up its mind definitely on the subject and it remained open to any suggestions that might be put forward by other delegations.

34. Chapter III of the report dealt with the progress of work on topics currently under discussion but not considered by the Commission at its previous session for lack of time. It was noteworthy, however, that the Special Rapporteurs for State succession in respect of treaties and for matters other than treaties, and for State responsibility, had submitted new reports which would enable the Commission to continue its study of those topics. In addition, at the suggestion of the Special Rapporteur for the topic of most-favoured-nation clauses, the Commission had requested the Secretariat (*ibid.*, para. 113) to prepare a digest of decisions of national courts on the subject; that would be extremely useful for later work on a subject which was becoming daily more important for the promotion of international economic relations.

35. The delegation of Argentina regarded the question of progressive development and codification of the rules of international law relating to international watercourses as particularly important. As was pointed out in paragraph 285 of the working paper prepared by the Secretary-General entitled "Survey of International Law", not only had rules and agreements governing the use of rivers flowing through or between the territories of States frequently been adopted but also numerous international river commissions established by treaty had contributed to the development of the law in that direction, despite which the general law relating to the utilization of international rivers had remained, in considerable part, customary law. Since the General Assembly in resolution 2669 (XXV) had requested the Secretary-General to continue the study initiated by the General Assembly by its resolution 1401 (XIV) in order to prepare a supplementary report on the legal problems relating to the utilization and use of international watercourses, the Argentine delegation had no doubt that once that report was ready, the Commission would embark on its work for the progressive development and codification of international law.

36. His delegation congratulated the Secretary-General on his preparation of the "Survey of International Law", which would be useful as a background document for the Commission in considering its long-term programme of work. The "Survey" went further than that, and would be extremely valuable for studies of international law throughout the world.

37. His delegation was gratified to note that the Commission was continuing to co-operate with other legal bodies, first and foremost the Inter-American Juridical Committee which, following the entry into force of the Protocol of Amendment to the Charter of the Organization of American States, done at Buenos Aires, 27 February 1967, had become one of the main organs of OAS. The Commission's co-operation with the Asian-African Legal Consultative Committee and the European Committee on Legal Co-operation was likewise most welcome.

38. The Argentine delegation would like once again to express its support of the Seminar on International Law and was glad to see that at the most recent session of the Seminar, Spanish had been used for the first time as a working language.

39. It also welcomed the decision by the Committee (*ibid.*, para. 166) to establish an annual lecture honouring the memory of Gilberto Amado, the illustrious Brazilian jurist.

40. Mr. BENNETT (United States of America) commended the excellence of the document prepared by the Secretary-General under the title of "Survey of International Law", and the programme of work established for itself by the Commission. He hoped the Commission would be requested, as it suggested itself in paragraphs 133 and 134 of the report, to prepare a set of draft articles regarding crimes against diplomats and other persons entitled to special protection under international law; such an instrument might make further provision for international co-operation to bring to justice those who commit serious crimes against persons entitled to such special protection.

41. He supported the International Law Commission's recommendation on the convening of an international conference of plenipotentiaries to study the draft articles on the representation of States in their relations with international organizations and to conclude a convention on the subject. The conference might meet in 1974 at United Nations Headquarters unless arrangements could be made to avoid any additional expense of holding the conference elsewhere. He added that if in the meantime the preparations for the proposed convention on the protection of diplomats had made satisfactory progress, the international conference might examine both conventions simultaneously.

42. With regard to the substance of the draft articles on State representation, he was glad to note the improvements made to the text since the previous year, in particular the addition of article 82, though he regretted that that article did not provide for a mandatory procedure for the settlement of disputes by the International Court of Justice, on the pattern of the Convention on the Privileges and Immunities of the United Nations.

43. In the United States view, the protection of host countries against abuse of privileges and immunities was vitally important. Article 75, paragraph 2, did provide that in cases of grave and manifest violation of the criminal law of the host State by a person enjoying immunity from justice, the sending State was under an obligation to take certain measures. But if a dispute arose concerning the nature of the violation, the host State had no recourse except the consultation and conciliation procedures laid down in articles 81 and 82, which might be too slow to ensure protection. It would therefore be advisable to add to the draft articles a provision allowing the host State to require the departure of a person guilty of abusing his privileges–subject of course to the necessary safeguards. That was the precedent of section 13 *(b)* of the Headquarters Agreement between the United Nations and the United States[6] and of section 25, paragraph 1, of the Convention on the Privileges and Immunities of the Specialized Agencies.[7] Those provisions were not confined to "grave and manifest violation of the criminal law of the host State" as indicated in article 75, paragraph 2, of the draft articles, but covered all cases of abuse of privileges of residence. Article 75, paragraph 1, did stipulate that persons enjoying privileges and immunities as laid down in the draft articles must "respect the laws and regulations of the host State". But the stipulation was not carried over into paragraph 2, the final sentence of which also included an ambiguous exception.

44. The United States Government also had serious misgivings about the scope of the privileges and immunities accorded to observer missions. Even though article 5, paragraph 2, did not change the existing practice regarding the establishment of observer missions, the draft articles created privileges and immunities for such missions that in most cases were coterminous with those accorded to permanent missions regardless of the differences between the functions of the two types of mission. Observer missions should only enjoy such privileges and immunities as were necessary for their functioning. His delegation was opposed to any tendency to confuse the status of representative with that of observer, for example by the use of the word "representation" in article 7 *(a)*.

45. The United States Government also had reservations concerning the extension of privileges and immunities to members of the administrative and technical staff of missions and members of their families as provided in article 36, paragraph 2. Full diplomatic privileges and immunities were not here justified, since they were not necessary for the effective functioning of the mission. Similarly, article 26 provided that the host State should ensure freedom of movement and travel in its territory to all members of the mission and members of their families. The United States delegation would prefer the language of article 57, by which the host State ensured such freedom of movement and travel in its territory as was necessary for the performance of the tasks of the person involved. The United States was in favour of the principle of the broadest possible freedom of movement, but noted that freedom of movement had been abused in the past, sometimes for purposes of espionage. Articles 9, 42 and 76 presented similar problems. There had been cases where members of diplomatic missions had been accused of espionage and expelled from the host country as *persona non grata,* only to be reassigned as members of the permanent mission of their country to an international organization. No State could be expected to tolerate such manoeuvres; while supporting the freedom of States to select the members of their permanent missions or delegations, like all other freedoms, it could not be absolute.

46. His delegation likewise had misgivings concerning a number of minor points in the draft articles. It considered, for example, that the provision in article 54 relating to inviolability of the premises of the mission should not apply to hotel rooms, in spite of the arguments put foward on that point in paragraph (4) of the commentary. Nor was it convinced by the arguments in paragraph (2) of the commentary to article 64 in regard to exemption of the members of delegations from sales taxes.

47. The provisions of articles 31 and 62 concerning waiver of immunity were regressions from article 34 of the previous draft,[8] which had made it obligatory for the sending State to waive immunity for its nationals in appropriate instances, as was the case in section 14 of the Convention on the Privileges and Immunities of the United Nations.[9] The effort to replace article 34 of the previous draft by paragraph 5 of the present article 31 was inadequate because it contained no explicit waiver requirement.

48. With regard to the draft articles on observer delegations to organs and to conferences (see A/8410, chap. II, sect. D, annex), his delegation was not convinced of their necessity, although it would like to study the matter at greater length. In the meantime, he wished to make it clear that many of the comments it had made on the draft articles on State representation applied with equal force to the draft articles on observer delegations.

49. Mr. FRANCIS (Jamaica) said that he would not comment for the time being on the draft articles on the representation of States in their relations with international organizations, since they would be subsequently examined within or outside the Sixth Committee.

50. His delegation considered that careful study should be given to the question whether a special conference should be convened to examine the draft, in accordance with the recommendation of the Commission, and agreed with other delegations that the Sixth Committee should take no decision on the matter at the current session. At the appropriate time, the Committee would recommend to the General Assembly a course of action based on a proper balance of the considerations of necessity, convenience and economy.

6 See General Assembly resolution 169 (II).

7 See General Assembly resolution 179 (II).

8 See *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 10,* p. 10.

9 See General Assembly resolution 22 (I).

51. The preparation of the final draft of the articles had prevented the Commission from considering the other priority topics in its programme of work, but the report contained very interesting information on work in progress on those topics.

52. With regard to the most-favoured-nation clause, his delegation thought it might be advisable for the United Nations Commission on International Trade Law to study that topic, in view of its very close connexion with trade matters. Although the General Assembly had requested the International Law Commission to undertake that study, if further consideration of the topic revealed that it was more relevant to the terms of reference of the United Nations Commission on International Trade Law, the International Law Commission should inform the General Assembly accordingly.

53. That suggestion was based on two of the important characteristics of the most-favoured-nation clause. In the first place, the clause was peculiar to commercial treaties; secondly, its main purpose was, in some respects, to achieve equal trading opportunities and, in other respects, to achieve a self-propelling extension of freedom of investment and favourable tariff arrangements. There was yet a third factor, that of the close connexion between the most-favoured-nation clause and some of the important provisions and the practical application of GATT. Furthermore, the Commission on International Trade Law functions in the general area of the harmonization and unification of the law of international trade included those of preparing or promoting the adoption of new international conventions and promoting the codification and wider acceptance of international trade terms, provisions, customs and practices.

54. It might be said that the Commission on International Trade Law should be as concerned with the most-favoured-nation clause as it was with GATT and that the two questions were interrelated. Accordingly, since that Commission was competent to prepare new international conventions in the field of codification, it might well be entrusted with the codification of the most-favoured-nation clause.

55. His delegation supported the suggestion for conducting an annual memorial lecture as a tribute to the late Gilberto Amado; that had been made possible by the generosity of the Brazilian Government and by the initiative of the members of the Commission who had set up a special trust for the purpose. It was to be hoped that substantial sums would be added to the initial sum establishing the trust and that the members of the advisory committee set up by the Commission would organize the annual lecture in keeping with the high purpose it was intended to serve.

56. His delegation welcomed the co-operation between the Commission and regional legal institutions. Occasional participation by members of the Commission in important meetings of those institutions should be encouraged, since in the field of codification it augured well for the harmonization of regional approaches to specific areas of international law.

57. The Secretary-General was to be congratulated on the document entitled "Survey of International Law". Although his delegation had not yet had time to complete its study of the document, it already had the impression that it was a most useful work, which would certainly be of interest to many countries.

58. Mr. SUCHARITKUL (Thailand) expressed his gratification at the working relationship between the Commission and the Sixth Committee and said that his Government would require more time for a detailed examination of the draft articles on the representation of States in their relations with international organizations.

59. He regretted that the pre-eminent role of the host State, which was referred to in particular in articles 20-41 and 51-77, was not reflected in the title of the draft, which would more logically read "Draft articles on the representation of States in their relations with international organizations and the host States". He also regretted that the draft did not contain a more precise definition of the term "international organizations of universal character": for example, it was not clear whether the draft articles were supposed to apply to the United Nations Office at Geneva, the United Nations regional economic commissions and the regional offices and headquarters of various specialized agencies. Yet the precise scope of the draft was of practical interest to host States. It might be advisable, in order to make the concept of universality more specific, to depart from the purely geographical criterion and to lay more stress on the general and sovereign nature of the functions carried out by the States members of the organizations concerned.

60. The draft articles were essentially concerned with the privileges and immunities of permanent missions, heads of mission and other members, as well as delegations attending conferences. Of all the special rights accorded by the host State, jurisdictional immunity was the most important. State immunities were based on the interplay of two fundamental principles of the law of nations, namely, the principle of sovereignty and that of territoriality, the latter prevailing in cases of conflict; but as an exception the sovereign territorial State sometimes waived its jurisdiction over sovereigns and certain other agents of foreign States, in accordance with the principle *par in parem imperium non habet*. The jurisdictional immunities of diplomats essentially derived from *courtoisie internationale,* which in turn was based on the principle of reciprocity. In the case of international organizations, however, reciprocity could not come into play, since of all the members only the host State had to assume certain responsibilities without correlative rights or privileges. In conformity with the general trend towards restriction of immunities, therefore, the nature and extent of the privileges and immunities to be granted in each case must be defined according to the functions to be performed by the beneficiaries. That applied in particular to jurisdictional immunities, which might be established either *ratione materiae* or *ratione personae*. In both cases those immunities should be construed restrictively. Moreover, it seemed difficult to apply the criterion of the universality of the organization to the question of jurisdictional immunities, for which there was certainly less need in the case of such universal organizations as the Universal Postal Union than in the case

of certain political regional organizations, such as the European Economic Community or the CMEA.

61. Article 31 seemed to be in line with the restrictive trend, particularly paragraph 2, which required that waiver of immunity must always be express.

62. Article 79, on the non-recognition of States or Governments or absence of diplomatic or consular relations, was a significant confirmation of existing practice. Article 80, on non-discrimination, was an essential corollary to that article.

63. The question of obligatory conciliation in the case of disputes required careful examination.

64. Turning to the Commission's recommendation to convene an international plenipotentiary conference to study the draft articles on the representation of States, he said that, in view of the many international conventions and bilateral agreements in force, he considered that it would be better to wait until the draft articles had been studied in detail by Governments, which might in the meantime either enact any laws they deemed necessary or apply existing national legislation.

65. For its long-term programme of work, the Commission had before it a useful study prepared by the Secretary-General under the title "Survey of International Law." It would have to establish an order of priority for the subjects dealt with in that document and, if necessary, add certain topics not mentioned in it.

66. His delegation recommended the continuation of the Seminar on International Law; it hoped that a volume would be published on the contributions made by Gilberto Amado to the progressive development of international law; finally, it was pleased to note that the Commission had continued to maintain close co-operation with various regional bodies, particularly with the Asian-African Legal Consultative Committee and the Inter-American Juridical Committee.

Organization of Work

67. The CHAIRMAN said that the permanent observer of Switzerland had informed him, in a letter reproduced in document A/C.6/407, of his Government's wish to be associated with all work relating to agenda item 90 (Review of the role of the International Court of Justice). If there were no objections, he would assume that the Committee would consider the request of the Swiss Government when it came to discuss that item.

It was so decided.

The meeting rose at 1 p.m.