



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, A/C.6/L.822)

1. Mr. VEROSTA (Austria) expressed appreciation of the work accomplished by the International Law Commission during the past year. With regard to the draft articles on the representation of States in their relations with international organizations (see A/8410, chap. II, sect. D), he would confine himself at the present stage to two remarks. Firstly, in connexion with article 4, his delegation was glad that the final text safeguarded the stipulations of existing international agreements, as Austria had urged in its observations (see A/8410/Add.1 and Corr.1) on the provisional draft articles; it accepted that text and endorsed the observations in paragraphs (4)-(5) of the commentary on article 4, to the effect that the new régime would not prejudice certain rules which prevailed within certain organizations and reflected their particular needs, and that the draft articles were not intended to preclude the adoption of different rules in the future. Secondly, with regard to the proposed plenipotentiary conference, his Government would be prepared to act as host to such a conference on the same conditions as had applied to the Vienna Conferences on Diplomatic Intercourse and Immunities, on Consular Relations, and on the Law of Treaties.

2. His delegation noted with satisfaction the progress made on the topics of succession in respect of treaties and succession in respect of matters other than treaties. It appreciated the fruitful work achieved by the Special Rapporteurs both on those two subjects and on State responsibility. It commended the Secretariat for the assistance it had furnished the Commission by its various studies, and in particular for the excellent working paper entitled "Survey of International Law".¹ His delegation noted with satisfaction the Seminar on International Law which had been organized at Geneva, and it endorsed the programme of work outlined by the Commission in its report (A/8410 and Add.1 and Add.1/Corr.1 and Add.2).

3. Mr. KOH (Singapore) noted with satisfaction that the Commission had completed the draft articles on the representation of States in their relations with international organizations and said he would confine himself to a few preliminary remarks at this stage. He was in favour of

amending the title, as proposed by the representative of Thailand (1259th meeting), by the addition of the words "and the host States" at the end. The definition of an international organization of universal character given in article 1 of the draft articles should likewise be made more precise. It was not clear, for example, whether the definition covered such bodies as the Economic Commission for Asia and the Far East or the Asian Development Bank. He agreed that the provisions of articles 3 and 4 were necessary, although he believed that if the proposed convention was to be really effective it should eventually become the norm in that particular area of diplomatic law. Consequently, Governments should be given sufficient time to make a thorough study of the draft articles.

4. As the representative of a small developing State with few diplomatic missions abroad, he welcomed the recognition in article 6 (c) of the draft articles of the practice of holding consultations among States through their permanent missions at the United Nations. In that connexion, he would also like to see the practice of multiple accreditation referred to in article 8 of the draft articles explicitly recognized. His delegation saw no useful purpose in trying to determine precedence among permanent representatives either in accordance with alphabetical order, as provided in article 17 of the draft articles, or by other means. He therefore considered the proposed article unnecessary.

5. The conciliation procedure proposed in article 82 was stated by the Commission (see para. (6) of the commentary) to represent the largest measure of common ground that could be found at present among Governments. On that basis his delegation welcomed the provisions as a practical compromise.

6. With regard to the method to be followed for adopting the convention, his delegation took the view that the draft articles should be considered by the Sixth Committee rather than by a conference of plenipotentiaries. In his view, economy should be the decisive criterion and he would like the Chairman of the Commission to explain the reasons for its recommendation that the draft articles be considered by a conference of plenipotentiaries. He was pleased to note that it was the Commission's intention to complete the first reading of the entire set of draft articles on succession in respect of treaties during the 1972 session. His country, like many others, had a great interest in that matter.

7. He congratulated the Secretary-General on his excellent work in preparing the "Survey of International Law".

¹ A/CN.4/245.

8. Mr. ZOTIADIS (Greece) said that the Commission contributed a great deal to the promotion of international law and, by preparing important international conventions, to the cause of peace. The Commission and its Special Rapporteur on relations between States and international organizations deserved special praise for the draft articles completed on that subject, thus rounding off the codification of diplomatic law. Apart from their juristic importance, they represented a practical aid towards the smooth functioning of State representation in international organizations and thus of the organizations themselves.

9. His delegation welcomed the articles on permanent missions, since they were based on the principle of functional necessity, derived from Article 105 of the Charter, and equated permanent missions to international organizations with permanent diplomatic missions. In that respect they accorded with international practice and codified many of the principles underlying multilateral international agreements on relations between States and international organizations.

10. With regard to permanent observer missions, article 5, paragraph 2, was to be welcomed. The new provision should be interpreted as expressing the principle that it was the prerogative of the organization concerned, subject to its practice and regulations, to pronounce on the accreditation of an observer mission. However, observer missions should not enjoy substantially the same privileges and immunities as permanent missions; the principle of functional necessity should apply to observer missions, which did not have the same representative capacity as permanent missions and the principle should be treated on a basis of reciprocity and could not be applied to them. A possible course would be to grant observer missions limited privileges and immunities, leaving anything further to be negotiated between the host State and the organization concerned. His delegation felt that the Commission had gone beyond existing practice in its approach to the question of delegations of States to organs and to conferences of international organizations; the appropriate course would be to combine the principle of functional necessity with international practice.

11. With regard to the procedure for concluding the proposed convention, his delegation considered that the Sixth Committee would be greatly strengthened if the task were allocated to it, but in view of the divergence of opinion on the subject it did not think a decision should be taken until the twenty-seventh session of the General Assembly.

12. It was a matter for regret that the Commission had not had time to study the reports submitted to it on succession in respect of treaties, succession in respect of matters other than treaties, State responsibility, and the most-favoured-nation clause. The reports nevertheless indicated that considerable progress had been achieved on those topics. His delegation attached particular importance to the question of State responsibility because of its significance for safeguarding international peace and security. It was appropriate that the draft articles on that topic should cover not only the basic principles and objective elements of internationally wrongful acts but also rules regarding compensation for such acts.

13. His delegation fully endorsed the Commission's decisions on its future programme of work and hoped that the questions of the protection of diplomats and the non-navigational uses of international watercourses would receive priority treatment. It warmly congratulated the Secretary-General on his "Survey of International Law".

14. Mr. SEATON (United Republic of Tanzania) said that although the Commission had had a longer session than usual, it had been able to do little more than prepare the final draft of articles on one topic and it had not had time to discuss the reports submitted to it on others. Wisely enough, it had deferred any definite conclusions about its future programme of work until it was reconstituted. The Commission therefore seemed somewhat inactive at the moment, as indeed did the Sixth Committee, with its light agenda. Some delegations were against undue haste in the preparation of topics for codification on the ground that it would militate against the acceptance by States of the results of the Commission's work, but the lack of support for the Convention on Special Missions might be due to a different cause—to the fact that it was something of a luxury. If so, it would be necessary to consider carefully the kind of subjects which the Commission's future programme of work should contain.

15. It was significant that the General Assembly had refrained from entrusting the Commission and the Sixth Committee with the important work of codifying and progressively developing the law on the peaceful uses of outer space and the uses of the sea-bed and the ocean floor beyond the limits of national jurisdiction. That was perhaps because the lawyers who had prepared the 1958 Conventions on the law of the sea had been lacking in foresight. Lawyers were possibly too concerned with the past and with the maintenance of established positions; indeed, much of the Commission's work over the years had been in the rather limited field of the privileges and immunities of State representatives. There was, of course, the Convention on the Law of Treaties, but it remained to be seen whether that would be any more successful than the 1958 Conventions on the law of the sea.

16. The leisurely procedures adopted by the Commission were outdated, and shorter sessions devoted to a single topic might achieve quicker and more satisfactory results. The deliberations on State succession, for example, were speedily rendered obsolete by the daily practice of States, many of which were new countries and had to develop workable rules without delay.

17. With regard to the draft articles on the representation of States in their relations with international organizations, his delegation would for the present merely express its regret that the Commission had not accepted the suggestion made by the United Republic of Tanzania at the twenty-fifth session of the General Assembly (1189th meeting) that the draft articles should include some provisions on representatives of entities other than States. It disagreed with the view expressed on that point in paragraph 54 of the Commission's report.

18. Mr. ABAS (Malaysia) welcomed the extension of the work of the Commission to embrace the dissemination of the rules of international law through memorial lectures

and seminars; he hoped that the yearly seminar would be a permanent feature of the Commission's activities and that more and more of the richer countries would make financial contributions for that purpose.

19. With regard to the proposed programme of work he appreciated that many matters were left undecided because of the pending termination of the terms of office of some members of the Commission. He welcomed the Secretary-General's "Survey of International Law" and hoped that the Commission would be able to select topics from it for inclusion in its long-term work programme. The provisional agenda for the twenty-fourth session (see A/8410, para. 130) included the topics currently being considered by the Commission, and it was also proposed to hold preliminary discussions on the topic of treaties concluded between States and international organizations or between two or more international organizations. He approved paragraph 132 of the report concerning the continuation of the work of a Special Rapporteur re-elected to the Commission; it was a convenient procedure and saved time and money. The General Assembly should give a clear mandate to the Commission in connexion with the study of the question of the protection of diplomats. He hoped that substantial progress would be made by the Commission in its work on the law relating to international watercourses and he awaited with keen interest the final result of its study of the most-favoured-nation clause.

20. Turning to the question of State responsibility, he noted with interest the enumeration of general principles of State responsibility in the third report of the Special Rapporteur,² and since the approach to defining the basic principles and applying them to given situations would be conducive to a speedy conclusion of the study, he hoped that the draft articles on the subject would soon be ready.

21. The reports of the Special Rapporteurs on succession in respect of treaties³ and on succession in respect of matters other than treaties⁴ showed clearly that many issues in the law of succession of States were uncertain, since neither State practices, where laws of succession governed the transmission of property from a deceased owner to his beneficiaries, nor decisions of international courts, which considered a State as an abstract entity, could give complete guidance. Since a change-over from one State to another was nothing more than the replacement of old sovereignty by new sovereignty, any law made by the former State should be recognized as valid by the new State in relation to a third State, unless it was contrary to international law. Rights and obligations attaching to the new State could perhaps be classified as political rights and obligations, even though that would be difficult to define.

22. He welcomed the final draft articles on the representation of States in their relations with international organizations and reserved the right to comment on them later.

23. On the question whether the draft articles should be adopted at a conference of the plenipotentiaries or by the General Assembly, his delegation had not yet made up its

mind; but it would certainly be inconvenient for countries with small delegations if it were to be done by the Assembly.

24. Mr. ZALDIVAR BRIZUELA (El Salvador) said he would speak later about the specific questions arising out of the Commission's report. He likewise reserved his delegation's position on the recommendation to convene an international conference of plenipotentiaries to draw up a draft convention.

25. In studying the draft articles, he had been particularly interested in articles 73, 74, 79, 80 and 82, and his delegation considered that a fair balance had been achieved between the view taken by some delegations that immunities and privileges should be extended and the view that some privileges, such as tax exemption, should be restricted. He endorsed the annex to the draft articles on observer delegations to organs and to conferences, and had carefully studied the reports of the Special Rapporteur on succession in respect of treaties, succession in respect of matters other than treaties, State responsibility and the most-favoured-nation clause, which were referred to in chapter III of the Commission's report, and the report of the Sub-Committee on the question of treaties concluded between States and international organizations or between two or more international organizations, annexed to chapter IV of the report.

26. He recalled that his delegation had voted for General Assembly resolution 2669 (XXV), paragraph 1 of which recommended that the Commission should take up the study of the law of the non-navigational uses of international watercourses. The Commission should devote special attention to that question.

27. In connexion with the protection of diplomats, the working paper submitted by the delegation of Uruguay (A/C.6/L.822) was of unusual interest as dealing with a matter of topical importance and particularly relevant to the American continent. He trusted that the Commission would give due attention to the topic.

28. He welcomed the institution of an annual lecture in memory of Gilberto Amado as well as the holding of the Seminar on International Law, which three members of the Sixth Committee, including himself, had been able to attend.

29. Mr. SINGH (India) congratulated the Chairman of the Commission for his personal efforts in completing the codification of the diplomatic law of international organizations. In this regard the highest praise was due to Mr. El-Erian, Special Rapporteur on relations between States and international organizations, without whose industry that codification would not have been possible. He also praised the work of great distinction being prepared by Sir Humphrey Waldock, Mr. Ago, Mr. Ustor and Mr. Bedjaoui, the other Special Rapporteurs for succession of States, State responsibility, the most-favoured-nation clause and succession in respect of matters other than treaties, respectively. He also welcomed the Secretary-General's working paper entitled "Survey of International Law", and the holding of the annual Gilberto Amado Memorial Lecture.

² A/CN.4/246 and Add.1-3.

³ A/CN.4/249.

⁴ A/CN.4/247 and Add.1.

30. The representative of the United Republic of Tanzania had pointed out that the Commission's output was slow and meagre. Taking into consideration the fact that the Commission met for about 8 weeks in 12 months and invariably took into consideration at every step the comments of Governments of Member States, the progress achieved by the Commission in the field of codification was of no mean order.

31. Turning to the Commission's working methods, he thought it was essential for the views of Member States to be taken into account. Even though that could be a time-consuming and rather frustrating task, it nevertheless led to satisfactory results in the long run.

32. As far as the total output of the Commission's work was concerned it was quite spectacular in the sense that as many as 16 subjects had been codified. Among them were important and substantial topics like the law of treaties, the law of the sea and diplomatic law. He suggested that the Commission might devote one session to *ad hoc* topics such as the protection of diplomats, which was of urgent importance to all countries.

33. He welcomed the draft articles on the representation of States in their relations with international organizations, noting that the Commission had struck a judicious balance between the functional and the representational approach; it had also retained the terminology of previous conventions, such as the Vienna Conventions on diplomatic relations and consular relations and the Convention on Special Missions, where appropriate, and had introduced new matter only where required to cover new points. The flexibility of the Commission's approach could be seen in articles 2-4, as for example article 2, paragraph 4, enabled the provisions of the articles to be made applicable to non-universal international organizations. He noted that the draft did not deal with the question of representatives of international organizations working with Member States, a subject that required a different approach and that would have to be considered in the future. The problem of making obligations binding on third parties was touched on in articles 22-22, and 51-53, which imposed definite obligations on international organizations; in that connexion he supported the procedure and solution proposed by the representative of the Netherlands (see 1256th meeting). Article 79 was of vital importance, and articles 81 and 82 were also most important. In regard to settlement of disputes, some delegations had emphasized the need for reference to the International Court of Justice. There could be no objection to obligatory jurisdiction being created but that did not receive the largest measure of agreement. The Commission, therefore, rightly decided not to go further.

34. With regard to the adoption of the draft articles, he suggested that when those relating to observer delegations were sent to Governments for comments, the Governments should be asked at the same time whether they would prefer to have the draft articles studied by a conference of plenipotentiaries or by the Sixth Committee. A decision could then be made on the basis of the replies.

35. In regard to the future programme of work, the Commission should deal with topics of universal concern. The questions of State succession and State responsibility

were such topics and should therefore get the highest priority. Again the subject relating to treaties between States and international organizations should be given a high priority along with the most-favoured-nation clause. The protection of diplomats could be taken up as an *ad hoc* topic to be completed in one session if possible. The subject of international watercourses was of interest to some States only and could not have the same priority as subjects of universal interest. It might be given a lower priority.

36. Mr. LOOMES (Australia) welcomed the completion of the draft articles on the representation of States in their relations with international organizations, which had been shortened by the device of drafting by reference and by consolidating the definitions. His Government was pleased to note that article 75, paragraph 2, obliged the sending State to take action in the case of grave and manifest interference in the internal affairs of the host State by one of its representatives, but wondered whether the provision went far enough to secure universal support. The observations made by host States reflected concern over the paucity of protection accorded by the draft articles. His Government had also noted that the privileges and immunities accorded to members of permanent observer missions and delegations to organs and to conferences still went far beyond the level which could be considered adequate on the basis of functional necessity. In that respect his delegation agreed with the warning voiced by the representative of Sweden (1256th meeting) that the treatment of such matters as privileges and immunities and the expulsion of representatives would make or break the draft convention. In many countries there was public and parliamentary resistance to the proliferation of organizations and individuals entitled to special privileges.

37. While agreeing with the broad principle of equating permanent missions to international organizations with diplomatic missions, he could see no reason for according like treatment to permanent observer missions, and in that connexion he endorsed the remarks made by the representative of the United States of America (1259th meeting). In the case of delegations to conferences falling under part III of the draft articles, his Government felt that article IV of the Convention on the Privileges and Immunities of the United Nations⁵ would have provided a perfectly adequate basis, and he pointed out that a considerable number of such conferences were held each year.

38. With regard to the decision of the Commission (see A/8410, para. 57) to recommend that the General Assembly should convene a plenipotentiary conference to study the Commission's draft articles on the representation of States in their relations with international organizations and to conclude a convention, his delegation considered that the observations of Member States and other interested States, such as Switzerland, and organizations (A/8410/Add.1 and Corr.1 and Add.2) should be studied by Governments and a final decision taken by the General Assembly at the next session. In this connexion, he recalled that the final draft articles had been submitted to Governments at a very late stage; there had not been time for adequate consideration to be given to them.

⁵ General Assembly resolution 22 (I).

39. His delegation had noted the valuable work undertaken in the important areas of State succession, State responsibility, the most-favoured-nation clause and the question of treaties between States and international organizations. It was particularly pleased with the Commission's decision (see A/8410, para. 128) to review its long-term programme of work at its next session and suggested that the topic of historic bays be taken up as a matter of priority.

40. After expressing his appreciation of the working paper entitled "Survey of International Law", he expressed doubts about the suggestion to draft a set of articles on the protection of diplomats, since basic legal instruments on that question were already in existence and Governments should be given time to reflect on the need for yet another set of draft articles. In that connexion, the working paper submitted by Uruguay (A/C.6/L.822) would have to be considered by Governments.

41. He expressed satisfaction with the latest Seminar on International Law, at which the Australian participant had gained most valuable experience.

42. Mr. CARNAUBA (Brazil) expressed his appreciation of the final text of the draft articles on the representation of States in their relations with international organizations, and the annexed preliminary draft on observer delegations to organs and to conferences, which he hoped would obtain speedy support.

43. With regard to article 1 he praised the precision of the terminology and the uniformity it achieved with that of the Charter and other international agreements. In view of the serious obligations imposed upon host States, his delegation approved the limitation of the application of the convention under article 2 to organizations of universal character. It also supported the provisions of article 23 in cases where public safety was threatened and thought that the whole concept of inviolability should be further refined. While agreeing with the principle of total immunity from criminal jurisdiction under article 30, his delegation was prepared to accept limitations in certain cases, such as that referred to in paragraph 1, subparagraph (d), of that article. It also agreed with the provisions of article 31 on waiver of immunity, which had been somewhat relaxed under its paragraph 5, and with articles 81 and 82, which established flexible machinery for consultations and conciliation. His delegation was in favour of convening an international

diplomatic conference for the adoption of the draft articles but would prefer that the matter should be considered at a later stage.

44. He supported Mr. Paul Reuter's appointment as Special Rapporteur for the question of treaties concluded between States and international organizations or between two or more international organizations and noted that a complete survey of the topic had been made, thanks to the replies of members of the Sub-Committee⁶ on that subject to the questionnaire prepared by its Chairman.⁷

45. The "Survey of International Law", prepared by the Secretary-General, was an important publication that deserved wide circulation. In that connexion, he drew attention to the problem of the exercise of jurisdiction of a State over matters containing an element of extra-territoriality, a question of great topical interest because of the increase in such crimes as hijacking and the kidnapping of diplomats. His Government's position on the latter issue was that all States should present a united front of international co-operation against terrorism, rather than adopt partial and expedient solutions in order to solve individual cases. The Commission should undertake an examination of the legal problems involved in another topic mentioned in the "Survey," namely the law relating to economic development.

46. His delegation agreed with the decision of the Commission (see A/8410, para. 128 (a)) to postpone a review of the long-term programme of work until its twenty-fourth session and he welcomed the strengthening of co-operation with such bodies as the Inter-American Juridical Committee, the Asian-African Legal Consultative Committee and the European Committee on Legal Co-operation. It had also been pleased to note the presence of outstanding jurists from Argentina and Colombia at the twenty-third session of the Commission.

47. He expressed his delegation's deep appreciation of the establishment of an annual lecture in memory of Gilberto Amado, to which his Government would extend initial financial assistance. His Government wished to thank all those responsible for that initiative.

The meeting rose at 1 p.m.

⁶ See A/CN.4/250, appendix II.

⁷ *Ibid.*, appendix I.