

United Nations
**GENERAL
ASSEMBLY**

TWENTY-SIXTH SESSION

Official Records



**SIXTH COMMITTEE, 1262nd
MEETING**

Tuesday, 19 October 1971,
at 3.20 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, A/C.6/L.822)

1. Mr. NYAMDOO (Mongolia) observed that international organizations, which were a tangible manifestation of co-operation among States, were playing an increasingly important role in contemporary international affairs and that the regulation of relations between States and international organizations was a task of paramount importance to which the International Law Commission had made a valuable contribution. The draft articles prepared by the Commission (see A/8410, chap. II, sect. D) faithfully reflected the rules established in international treaties and contemporary practice. He was pleased to note that the Commission had based the draft articles as a whole on the principle of functional need. Since relations between States and international organizations were diplomatic in nature, it was fitting that the draft articles should have been modelled on the Vienna Conventions on diplomatic law. His delegation regretted, however, that the privileges and immunities extended to permanent missions in the draft articles were more limited than those generally accorded by diplomatic law to representatives of States. Permanent missions should be given all the privileges and immunities required for the satisfactory performance of their functions.

2. As to article 2 on the scope of the articles, his delegation felt that the formula worked out by the Commission was satisfactory in so far as it would permit the draft articles to be applied not only to the representation of States in their relations with international organizations of a universal character but also, when the States concerned so agreed, to regional international organizations. He noted with gratification that article 6, concerning the functions of the permanent mission, rightly referred to the mission's obligation to promote co-operation for the realization of the purposes and principles of the organization. He was also pleased to note that States which were not members of an international organization were, under the provisions of the draft articles, entitled to send observer missions to the organization so that they could follow its work.

3. His delegation considered that the idea of assumed consent referred to in article 23 concerning the inviolability of the premises might be abused and could compromise the

very principle of inviolability. With regard to article 75, paragraph 2, which dealt with respect for the laws and regulations of the host State, his delegation took the view that that State could not declare *persona non grata* a diplomat accredited to an international organization whose headquarters was situated in its territory. His delegation also felt that article 82 was unnecessarily complex and even superfluous; it would have sufficed to refer to the means of settlement of disputes provided for in Article 33 of the United Nations Charter.

4. As to the procedure to be followed in adopting a convention based on the draft articles, his delegation felt that the Sixth Committee could be entrusted with the preparation of the definitive text, which would then be submitted to the General Assembly for adoption, as had already been done in the case of other instruments.

5. He hoped that the Commission would quickly complete its work on the topics of succession of States, State responsibility and the most-favoured-nation clause, to which his delegation attached great importance, and he commended the high quality of the working paper entitled "Survey of International Law",¹ which would be very useful to the Commission in reviewing its long-term programme of work.

6. Mr. SUY (Belgium) said he would confine his remarks to the draft articles on the representation of States in their relations with international organizations, which formed the main part of the report of the Commission on the work of its twenty-third session (A/8410 and Add.1 and Add.1/Corr.1 and Add.2).

7. His delegation felt that the title of the draft articles was misleading. The purpose of the text was not so much to regulate the relations between States and international organizations as to define the status of missions and delegations to international organizations in relation to host States. In other words, the draft articles were designed to regulate relations between the State sending a mission or a delegation and the host State in whose territory the international organization concerned was situated. It was therefore incorrect to state that the draft articles dealt with the "representation of States in their relations with international organizations", and it was important to make a clear distinction between the relations between the sending State and the international organization, and the juridical position vis-à-vis the host State of the permanent representatives of the sending State to the international organization.

¹ A/CN.4/245.

8. With regard to article 2, his delegation would prefer to change the expression “international organizations of universal character” in paragraph 1 to “international organizations with universal concerns”. It also felt that paragraphs 2 and 3 of article 2 infused an element of uncertainty into international relations in that the meaning of the concept of “international law” referred to in the paragraphs in question was unclear; his delegation therefore favoured the deletion of paragraphs 2 and 3 of article 2.

9. Articles 28 and 36 extended the principle of personal inviolability not only to the head of mission and the members of the diplomatic staff of the mission, but also to members of their families. His delegation considered that the host State could not be required to assume the same obligations in regard to the head of a mission and the family of a member of the diplomatic staff of a mission. The host State's obligation to protect should be related to the functions performed by the person to be protected. His delegation wished to point out the danger of departing from the provisions of the Vienna Convention on Diplomatic Relations of 1961 concerning the protection of diplomatic staff, and it would oppose any attempt to codify in greater detail the law governing the protection of diplomats.

10. With regard to articles 33 and 64, which dealt with exemption from dues and taxes and were based on the Vienna Convention of 1961, his delegation considered that the value-added tax was an indirect tax incorporated in the price of goods offered on the market, the nature of which was not affected by the fact that it could be separated from the price of goods.

11. As to article 50, concerning the status of the Head of State and persons of high rank, his delegation felt that in paragraph 1 the word “general” should be inserted before “international law”. It also felt that the expression “persons of high rank” was ambiguous and that international law did not accord any special status to such persons in international relations.

12. Article 53, in his delegation's view, was not in conformity with present-day practice in that it was not for the organization or international conference but rather for the host State to assist the sending State, its delegation and the members of the delegation in securing the enjoyment of the privileges and immunities provided for in the draft articles.

13. As for observer delegations to organs and to conferences, his delegation saw no need to grant them a régime as liberal as that which would be granted under the annex to the draft articles.

14. His delegation supported the Commission's decision (see A/8410, para. 57) to recommend to the General Assembly that a conference should be convened to prepare a final draft and, ultimately, to conclude a convention based on the draft articles; however, in view of the divergent views on that decision, his delegation felt that it might be advisable to defer the convocation of such a conference and, in the meantime, to invite Governments to express their views on the draft articles.

15. Mr. JELENIK (Hungary) affirmed the importance of the draft articles on the representation of States in their relations with international organizations. Since those organizations had been strengthened by the accession to membership of the Soviet Union and the other socialist countries and later by the newly independent States, the organizations had played a fundamental role in international life, a role which would become more important as time went on. It had therefore become necessary to regulate the relations between States and those organizations. The draft articles on that subject submitted by the Commission provided the basis for an international convention. In particular, article 4 and paragraph (4) of the commentary on that article defined clearly the relationship between the envisaged convention and the previous agreements on the topic of international organizations. Moreover, the draft articles established a fair balance between the interests of the sending State and those of the host State, whose responsibilities were offset by the moral and material advantages accruing to a State which served as host to an international organization. On the other hand, it was regrettable that the Commission had not drawn up more detailed rules concerning observer delegations.

16. With regard to the immunities provided for in the draft articles, he noted with satisfaction that the members of permanent observer missions and delegations were to be accorded, in their capacity as representatives of States, the benefit of such privileges and immunities as were necessary for the discharge of their functions. On the other hand, he was opposed to the provision made in article 23, paragraph 1, and article 54, paragraph 1, which, under certain circumstances, would permit the agents of the host State to enter the premises of the mission or of the delegation, assuming the consent of the head thereof. He recalled that the corresponding provision of the Vienna Convention on Diplomatic Relations²—article 22—contained no such provision.

17. His delegation endorsed article 81, which provided that disputes regarding the proposed convention should be submitted to consultations between the sending State, the host State and the organization. The article was, in fact, in line with existing practice, so that the complicated procedure envisaged in article 82 was superfluous.

18. Subject to certain formal changes and the necessary co-ordination of the observations made by the various States, the draft articles provided a basis for the preparation of a universal international instrument. Naturally, the universal nature of the instrument made it essential for all States to participate in the formulation of the definitive text and to become parties to the instrument. The task of producing the definitive text could be entrusted to the Sixth Committee and the convention could be adopted by the General Assembly as had been done in the case of the Convention on Special Missions.

19. His delegation noted with satisfaction the progress achieved by the Commission with regard to succession in

² See United Nations Conference on Diplomatic Intercourse and Immunities, 1961, *Official Records*, vol. II (United Nations publication, Sales No.: 62.X.I), document A/CONF.20/13 and Corr.1, p. 82.

respect of treaties, succession in respect of matters other than treaties, State responsibility, and the most-favoured-nation clause. It particularly commended the excellent working paper entitled "Survey of International Law", which would be most useful to the Commission in planning its long-term programme of work.

Mr. Klafkowski (Poland), Rapporteur, took the Chair.

20. Mr. PARSI (Iran) said that the draft articles contained in the report of the Commission were an important contribution to the codification and progressive development of diplomatic law. In view of the importance of the subject, however, the Governments and international organizations concerned should be given time to review the text in detail before considering the adoption of a definitive text. His delegation was in agreement with the form and structure of the draft articles and with the reasons given by the Commission in favour of the texts' serving as a basis for a convention rather than an expository code (*ibid.*, para. 42). It noted with satisfaction the flexibility provided for in article 4, on the relationship between the draft articles and other international agreements, and in paragraph (5) of the commentary on that article.

21. His delegation was in favour of the Commission's decision to recommend that the General Assembly should convene an international conference of plenipotentiaries to study the draft articles and to conclude a convention on that subject; however, such a convention could not be convened earlier than 1974, since Governments would need time to examine the draft in depth and, furthermore, two major conferences had already been scheduled for 1972 and 1973.

22. Despite the fact that at its twenty-third session the Commission had devoted its time mainly to the preparation of the draft articles, it had nevertheless achieved some progress in its work on the other topics in its programme of work. The fourth report submitted by Sir Humphrey Waldock on succession of States in respect of treaties³ was a valuable piece of work. His delegation hoped that at its twenty-fourth session the Commission would be able to embark on the examination of the draft articles contained in that report. Likewise, the third report submitted by Mr. Ago on State responsibility⁴ should help the Commission to make headway with that topic.

23. His delegation welcomed the Commission's decision to review its long-term programme of work with a view to bringing it up to date, and endorsed its recommendation that as wide as possible distribution be given to the excellent "Survey of International Law" (*ibid.*, para. 128).

24. He thanked the specialists who had participated as lecturers in the Seminar on International Law at Geneva, and the Governments whose financial support had made it possible for many participants from developing countries to take part in the Seminar.

Mr. Pollard (Guyana), Vice-Chairman, took the Chair.

25. Mr. SPERDUTI (Italy) stressed the usefulness of the working paper entitled "Survey of International Law".

³ A/CN.4/249.

⁴ A/CN.4/246 and Add.1-3.

However, he wished to make two remarks regarding the sources used in the preparation of the document. When resolutions and declarations by United Nations organs, particularly the General Assembly, were used, the question arose as to what standing they might have in a strictly legal sense. With regard to treaties or conventions, it would be useful to specify whether such instruments had already entered into force or not. Turning to the substance of the "Survey", he did not think that sufficient account was taken of the distinction, regarded as very important in Italian legal theory, between non-recognition arising from lack of diplomatic recognition and non-recognition resulting from the application of a penalty for an international offence. Until such a distinction was established, it would be preferable to avoid including in international conventions any provision concerning recognition or non-recognition. The Sixth Committee had followed that procedure at its twenty-third session,⁵ when it decided to delete any mention of recognition from article 7 of the draft articles on special missions.

26. He noted with satisfaction the progress achieved by the Commission at its twenty-third session, commended the working methods adopted, and endorsed its decision to place on the provisional agenda of its twenty-fourth session, for consideration after the renewal of its membership, the review of its long-term programme of work. He also endorsed the Commission's decision (*ibid.*, para. 166) concerning the Gilberto Amado Memorial Lecture.

27. The draft articles on the representation of States in their relations with international organizations, and especially the definitions set forth in article 1, were based mainly on the Vienna Convention on Diplomatic Relations and the Convention on Special Missions. Article 1, paragraph 1, subparagraph (22), according to which "members of the diplomatic staff" means the members of the staff of the mission or the delegation who enjoy diplomatic status for the purpose of the mission or the delegation", was particularly important. That definition was similar to that which was in the original draft articles on special missions prepared by the Commission,⁶ to which the Sixth Committee had added the words "for the purposes of the special mission",⁷ in order to make diplomatic treatment applicable to advisers and experts who, while not holding a rank established by the traditional classification of diplomatic personnel, nevertheless performed functions of a kind justifying such treatment. It might be advisable to include an appropriate commentary elucidating the subparagraph in question.

28. His Government would make known its position on the substance of the draft articles at the time of the final negotiations. His delegation did not have any strong preference as to the form such negotiations should take, but it did appreciate the soundness of the arguments in favour of the examination and adoption of the text of the future convention by United Nations organs.

⁵ See *Official Records of the General Assembly, Twenty-third Session, Annexes*, agenda item 85, document A/7375, paras. 46-55.

⁶ *Ibid.*, *Twenty-second Session, Supplement No. 9*, chap. II, sect. D, art. 1 (h).

⁷ *Ibid.*, *Twenty-fourth Session, Annexes*, agenda item 87, document A/7799, paras. 27-28 (art. 1 (h)).

29. Mr. TUTU (Ghana) said that his delegation had read the Commission's report with considerable interest and noted with satisfaction that it had completed the draft articles on the representation of States in their relations with international organizations. His Government would study the draft articles in detail and make known its position at a later date. However, it wished to recall its view that the question of diplomatic privileges and immunities for permanent observer missions should be approached from the functional viewpoint and that such missions should not be placed on the same footing as permanent missions. Similarly, the interests of host States should be carefully borne in mind so as not to create unnecessary burdens for them.

30. Regarding the question of convening an international conference to study the draft articles with a view to concluding a convention on the subject, his delegation favoured the procedure followed for the adoption of the Convention on Special Missions, which would incidentally be less costly. It felt, as did other delegations, that the draft articles should be referred to the Member States and to interested organizations before any final decision was taken. The examination of the draft with a view to the adoption of a convention should not be undertaken before 1973, in order to enable Governments to study the text carefully.

31. The Commission had not had time to examine other questions at its twenty-third session; however, his delegation reiterated the importance it attached to the question of State succession and urged the Commission to take up that subject without delay. It was to be hoped that at its twenty-fourth session the Commission would be able to prepare a final draft on State succession in respect of treaties.

32. His delegation noted with satisfaction the progress made with regard to succession in respect of matters other than treaties. On the subject of public property, it was his delegation's view that the attainment of independence by new nations formerly under colonial rule had resulted in the conclusion of many inequitable treaties and that practices detrimental to new States should not be used as a basis for the codification of international law on that subject. A more progressive approach based on equitable principles should be adopted.

33. His delegation noted with satisfaction the progress of work on the studies concerning State responsibilities and the most-favoured-nation clause. The remarks made by the Jamaican delegation (1259th meeting) in connexion with the latter question were very pertinent and should be considered by the Commission.

34. The working paper entitled "Survey of International Law" produced by the Secretary-General would be most useful to the Commission in the preparation of its long-term programme of work.

35. Mr. BAYONA (Colombia) said that the Commission's report on the work of its twenty-third session was undoubtedly an important document, particularly as it contained the final text of the draft articles on the

representation of States in their relations with international organizations. The whole question of the relations between States and international organizations was a very complex one, and the Commission had decided to give priority to one of the aspects of that question.

36. The draft articles did, of course, cover diplomatic law applicable to representation of States in international organizations, and particularly the question of privileges and immunities to be granted to such representations. However, neither article 2, on the scope of the draft articles, nor the rest of the draft dealt with every aspect of the matter, particularly the vital question of the right of States to be represented. Current practice tended to fall back on the relevant rules of the organizations concerned; however, if that procedure was accepted, the question of privileges and immunities could also fall back on the conventions and agreements concluded between organizations and States, without the necessity for drafting a general convention on the matter. His delegation felt it essential, in the interest of the progressive development and codification of the rules of international law, to conclude a general convention on the matter.

37. The problem now to be examined by the Commission was therefore that of the representation of States to international organizations and in particular to those of universal character. His delegation considered universality to be a very important question from the point of view of the juridical order of the international community, which should not be studied and resolved on the basis of political consideration alone. The problem of the right of representation of certain States was being raised in the United Nations itself. The legal analysis of the right of representation to international organizations and conferences of universal character could no longer be postponed. The basis of that right was essentially legal, and the only way of overcoming the present difficulties in international relations was to study it from the legal point of view. Since the matter was of interest to jurists throughout the world, the Sixth Committee and the Commission would have an important role to play in that connexion. The question could not be considered to be outside the competence of the United Nations organs, since the general question of relations between States and international organizations had appeared on the agenda of the General Assembly since 1958. The Sixth Committee must therefore study all aspects of the problem; some of them might even raise the question of amending the Charter. Consequently, in order to complete its studies of relations between States and international organizations, the Commission should once more examine the question of the right of representation of States and that of the representation of international organizations to States.

38. The draft articles constituted an excellent basis for the adoption of a new convention; the Colombian Government would carefully study them in the light of previous conventions, with the aim of bringing co-ordination and balance to the rules of diplomatic law as a whole.

39. As to the procedure to be followed in preparing the convention—the convening of a conference or study by the General Assembly—his delegation would revert to that

question after hearing the views of the majority of representatives.

40. His delegation thought that the Commission should prepare draft articles, which might constitute a basis for a convention on the protection and inviolability of diplomats and other persons entitled to special protection under international law. As the Uruguayan delegation had pointed out (1259th meeting), the Organization of American States had already adopted a similar instrument, and it was desirable that the United Nations too should adopt a convention on the subject. It would of course be a very difficult task, because principles such as non-interference and institutions such as the right of asylum must be respected. It was, however, necessary to prevent and check offences committed against diplomats. Otherwise, awkward situations were bound to occur. For example, if those acts were not considered as crimes under ordinary law, their perpetrators might be encouraged to take advantage of the right of diplomatic asylum. His delegation would therefore support any draft resolution inviting the Commission to prepare a draft convention on the subject, to be studied and adopted at the twenty-seventh session of the General Assembly.

41. Mr. GUNAY (Turkey) congratulated the Commission on the work done at its twenty-third session, during which the draft articles on the representation of States in their relations with international organizations had been completed, and on its excellent report.

42. Since the draft articles had only been issued and distributed a short time before, and contained provisions on observer delegations to organs and to conferences which had not been included in the provisional draft, his delegation would merely make some very general comments and reserved the right to make another statement on the matter if the occasion arose.

43. At the twenty-fifth session (1191st meeting), the Turkish delegation had pointed out that the provisional draft did not contain provisions concerning simple or temporary observers who, although not belonging to a mission or an embassy, were none the less representatives officially designated by their Governments. It was pleased to see that the Commission had filled that gap by adding several articles in the form of an annex to the final draft.

44. His delegation considered that observer missions should not be placed on almost the same footing with regard to privileges and immunities as permanent missions to the United Nations. It also thought that the relevant provisions should be made more flexible, in order to establish a just balance between the interests of the host State and the functional needs of the sending State.

45. The final draft should be submitted to the Governments of States Members of the United Nations for comments before a convention was adopted. As to the procedure to be followed for concluding such a convention, although no information was yet available on the final implications of convening the international conference proposed by the Commission, his delegation would prefer the matter to be studied by the Sixth Committee. If, however, there was a majority in favour of convening a

diplomatic conference, it considered that the conference should be held either at United Nations Headquarters or in a neighbouring city, in order to reduce expenses to the minimum.

46. The Turkish delegation welcomed the appointment of Mr. Reuter as Special Rapporteur on the question of treaties concluded between States and international organizations or between two or more international organizations.

47. It also approved the Commission's decision on the non-navigational uses of international watercourses and considered it perfectly reasonable that it should be left to the Commission in its new composition to decide what priority the topic should be given. It would be most useful to publish the Secretary-General's report of 15 April 1963⁸ on the legal problems relating to the utilization and use of international rivers, which was at present out of print, in the Commission's *Yearbook*.

48. With regard to the Commission's long-term programme of work, his delegation thought that its task would be made easier by the excellent working paper prepared by the Secretary-General under the title of "Survey of International Law".

49. The Turkish delegation was concerned at the increasing number of attacks upon diplomats and hoped that the Commission would be able to study that problem in the near future.

50. The co-operation established between the Commission and other regional legal bodies was all the more useful in that it enabled the interests of members of the international community to be served in the most economical way.

51. His delegation fully supported the establishment of a lecture in honour of the memory of the illustrious Brazilian jurist Gilberto Amado.

Mr. Rossides (Cyprus) resumed the Chair.

52. Mr. JACOVIDES (Cyprus) stressed the usefulness of the "Survey of International Law" prepared by the Secretary-General and expressed appreciation of the progress achieved in the codification and progressive development of international law through co-operation established between the Commission and the Sixth Committee, and enhanced by the harmonious working relations between those organs and the International Court of Justice and regional bodies such as the Asian-African Legal Consultative Committee, the European Committee on Legal Co-operation and the Inter-American Juridical Committee.

53. The final text of the draft articles on the representation of States in their relations with international organizations was a great improvement on previous versions. His delegation had not made up its mind definitely on the alternative courses proposed by the preceding speakers concerning the adoption of the future convention, but it felt that a final decision on that point might best be left to the General Assembly at its twenty-seventh session. It noted that, as provided in article 4, the draft articles were

⁸ A/5409.

without prejudice to existing international agreements and did not preclude the conclusion of future agreements. That might give the draft articles a rather academic character, but it would have the merit of establishing a uniform régime and uniform standards in that branch of law.

54. The progress made on the questions covered by chapters III, IV and V of the report, though modest, was none the less encouraging.

55. With regard to the long-term programme of work, he hoped that the Commission in its new composition would find ways and means of expediting its work in the many fields still to be codified and developed. His delegation was particularly interested in the protection and inviolability of diplomatic agents and had seriously considered requesting that a specific item be placed on the agenda of the General Assembly at its twenty-sixth session. He suggested that, in accordance with the decision appearing in paragraph 134 of

the report, the General Assembly should request the Commission to prepare a set of draft articles on that important subject at its twenty-fourth session.

56. His delegation was pleased to note the success of the Seminar on International Law and concurred with the Commission's decision in connexion with the Gilberto Amado Memorial Lecture.

57. In connexion with the comments made in document A/8362 regarding the publications of the United Nations Office of Legal Affairs, his delegation strongly felt that the matter should be carefully weighed in the light of the interests of the international legal community and recommended that no decision be made hastily on the basis of purely bureaucratic considerations.

The meeting rose at 5.35 p.m.