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**SIXTH COMMITTEE, 1344th
MEETING**

Thursday, 26 October 1972,
at 3.10 p.m.

NEW YORK

Chairman: Mr. Erik SUY (Belgium).

AGENDA ITEM 87

Representation of States in their relations with international organizations (continued) (A/8753 and Add.1 and 2)

1. Mr. BILE MALAN (Ivory Coast), having commended the International Law Commission for its draft articles on representation of States in their relations with international organizations, appearing in the report on its twenty-third session (A/8410/Rev.1),¹ said that his observations would be purely preliminary and that his delegation reserved the right to introduce amendments during the substantive examination of the draft articles.

2. The Commission's draft covered questions which were already governed by international instruments, such as headquarters agreements and conventions on the privileges and immunities of the various international organizations. Having regard to the heavy responsibilities imposed on host States, the scope of the future convention should be limited to international organizations of universal character. Furthermore, the peculiar nature of observer missions would not appear to justify the granting to them of the same privileges and immunities as to permanent missions; the facilities to be granted should be limited to those necessary to the performance of the duties involved. The importance of articles 81 and 82 on the settlement of disputes by consultation and conciliation should be stressed. In his delegation's view, the conciliation procedure should be simplified and made more expeditious. He wondered also what technical, legal and political imperatives underlay the Commission's failure to include in its draft adequate safeguards for the protection of the host State's security and internal order.

3. As to the procedure to be followed for the conclusion of the proposed convention, the Ivory Coast delegation appreciated the arguments of those who had suggested that the Sixth Committee should undertake that task but, for technical reasons and considerations of efficiency, shared the view of a large number of delegations that it would be preferable to convene a conference of plenipotentiaries. The text of the draft articles was long and complex and the time available to the Sixth Committee in the course of an ordinary session would scarcely suffice for its consideration. A conference of plenipotentiaries, however, could devote

the necessary attention to it and would therefore be in the best position to formulate an instrument which would be acceptable to the majority of States.

4. Mr. ABADA (Algeria) observed that his government had not yet transmitted its comments on the substance of the draft articles under consideration. Generally speaking, however, it took a favourable view of the text which, to a considerable extent, reproduced principles already embodied in instruments such as the Vienna Conventions on Diplomatic Relations and on Consular Relations, to which Algeria was a party.

5. However, as to the procedure to be followed for the completion of the proposed convention, it was not his delegation's view that the text of every draft international convention should automatically be referred to a conference of plenipotentiaries: the Sixth Committee had already demonstrated that it could undertake such codification of international law. Nevertheless, having regard to the relatively large number of articles to be considered and to the Committee's very heavy agenda for the next session, it favoured the convening of an international conference, the date of which could be decided during the twenty-eighth session.

6. Mr. SAM (Ghana) said that the procedure to be followed in the adoption of the draft convention on the representation of States in their relations with international organizations depended on a number of factors. The first consideration was that of expenditure, against which must be weighed the larger question of the importance of the draft convention from the standpoint of the progressive development and codification of international law. The Commission had indicated that the draft articles contained many provisions which were new and went beyond the provisions of any existing convention or agreement on the subject. States would not agree to offset the heavy cost of a diplomatic conference unless they attached sufficient importance to the instrument to be drawn up. The situation was not the same in the case of a draft of only 12 articles which did not involve any progressive development of international law as in that of one with 82 articles, many of which contained new legal principles. In the second case, experts should have an opportunity to devote their full attention to the subject, without any distractions. In addition, it would be necessary to give all interested parties an opportunity to participate actively in the final preparation of the convention, which would result in the quick ratification and implementation of the instrument.

7. The recommendations and suggestions of the Special Committee on the Rationalization of the Procedures and

¹See *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 10, chap. II, sect. D.*

Organization of the General Assembly, annex I to the rules of procedure of the Assembly, were very germane. His delegation considered that the Sixth Committee should recommend the Assembly to convene a conference of plenipotentiaries to adopt a convention on the basis of the draft articles, particularly as the Committee had already decided that, at the twenty-eighth session, it would proceed with the final elaboration of a draft convention on the protection of diplomatic agents—a decision which had been taken in the light of the facts which he had mentioned.

8. Mr. MIRAS (Turkey) said that the draft articles under consideration supplemented the Vienna Conventions on Diplomatic Relations and on Consular Relations and the Convention on Special Missions. He commended the Commission on its work and said that the Turkish Government had already stated its position on the draft (*ibid.*, annex I, part A) and reserved the right to take it up at a later stage. The terms “permanent mission”, “permanent observer mission” and “delegation” were new concepts in the progressive development of international law. Several provisions in the draft articles were the subject of controversy—including those relating to the protection of the host State and the extent of the facilities, privileges and immunities to be granted. A perfect balance had not been achieved between the interests of the sending State, the host State and the organizations concerned. In particular, the interests of the host State were insufficiently protected. The draft had borrowed too heavily from the Vienna Conventions on Diplomatic Relations and on Consular Relations and from the Convention on Special Missions and granted too many privileges to too many people. It should follow current practice and provide that privileges and immunities should be proportional to the functions of the organization in question. The draft articles, which could serve as the basis for the preparation of a convention, should be recast in a number of areas; the annex—concerning observer delegations to organs and conferences—should be incorporated into the body of the text and the number of articles should be reduced.

9. The Committee's work programme for future sessions was very heavy and if an acceptable text was to be formulated, the preparation of the convention should be entrusted to an international conference which should if possible meet at United Nations Headquarters in order to reduce costs to a minimum. Such a conference need not take place before 1974. Invitations should be extended to Switzerland, in view of its capacity as a host State, and to interested organizations.

10. Mr. MIMICA (Chile) commended Mr. El-Erian, the Special Rapporteur of the Commission for the topic under consideration, on the excellence of the work which he had accomplished. The draft articles were the outcome of serious and thorough study. They had been prepared with consummate legal skill and were applicable in countries having different legal systems. The proposed convention would supplement existing conventions in the field of diplomatic law. Generally speaking, the provisions of the draft were very close to Chilean practice. Chile had ratified the Conventions on the Privileges and Immunities of the

United Nations and on the Privileges and Immunities of the Specialized Agencies and the Vienna Conventions on Diplomatic Relations and on Consular Relations, whose principles had been reproduced, refined and developed in the draft. Nevertheless, Chile—a host State for international organizations and conferences—would in due course introduce such amendments as might be necessary for the harmonization of the interests of host States, sending States and international organizations. It was already clear that, as a number of delegations had pointed out, limitations should be imposed in the case of certain privileges which the draft extended too widely to persons other than the head of a mission and the members of its diplomatic staff. Furthermore, while recognizing the importance of articles 81 and 82 in the settlement of possible disputes between the host State and sending States, the Chilean delegation believed that the possibility of invoking the *persona non grata* procedure should be more widely available to host States.

11. The objections raised by various delegations with regard to the substance of the draft articles did not seem insurmountable and most of the provisions were not controversial. Consequently, the convening of an international conference, with the high expenditure which that would entail, hardly seemed justifiable. On the other hand, there was every reason why the forum chosen should be the Sixth Committee, composed as it was of eminent jurists. Furthermore, it would surely be the height of inconsistency to contemplate a plenipotentiary conference in the case of draft articles which posed no serious difficulties, when the Sixth Committee had recommended that the draft articles on the protection of diplomatic agents, which were the subject of the most vehement controversy, should be referred to it with a view to the elaboration of the text of the convention. It could scarcely be argued that a conference of plenipotentiaries would be more representative than the Sixth Committee, for certain States, including a large number of developing countries, might decide for financial reasons not to send representatives to such a conference whereas they would be represented in the Sixth Committee. Furthermore, there was no great difference between the qualifications of the persons who would be sent to a conference of plenipotentiaries and those of members of the Sixth Committee. In making the assumption that a specialized conference would complete its work more rapidly, it should not be overlooked that two sessions of the United Nations Conference on the Law of Treaties, in 1968 and 1969, had been necessary before a convention could be adopted. The Sixth Committee could also spread its own consideration of the question over more than one session. If the matter was put to the vote Chile would accordingly vote for the drafting of the proposed convention by the Sixth Committee, and the necessary work could conveniently begin at the twenty-eighth session. If a majority proved to be in favour of a conference of plenipotentiaries, however, the Chilean Government would certainly send a representative, because of its interest in the question.

12. Mr. ZEMANEK (Austria) said that the decision as to whether the Sixth Committee or a conference of plenipotentiaries should conclude a convention depended on several factors, in particular the subject of the convention. In the

present case that criterion would favour the choice of a conference, since the convention contemplated was not linked with other problems concerning the General Assembly. Moreover, experience showed that the Sixth Committee would undoubtedly need to devote at least three sessions to completing the task, if half the meetings were taken up with it. An even longer period would be needed if the Committee had to give priority to the consideration of any urgent questions that might be referred to it. His delegation therefore considered that it would be best to convene a special conference. Nevertheless, as the calendar of conferences was crowded, he thought it would be useful to adopt the suggestion of the United Kingdom (1342nd meeting) that the Committee should decide to convene a conference, but to defer to the twenty-eighth session the question of when and where to hold it. He was instructed by his Government to renew its offer of the preceding year (1261st meeting) to act as host to the conference in Vienna, in order to continue the tradition of diplomatic conventions adopted there.

13. Mr. BENNETT (United States of America) said that, as indicated in the comments of his Government (see A/8753), some revision in the articles would be necessary to make them generally acceptable. The Commission might have attempted to accomplish too much too soon in the codification of the subject, as the Swedish representative had stated (1340th meeting).

14. The United States delegation was not averse to the conclusion of a convention based on the draft articles. Their limited scope was appropriate in view of the need to avoid unsettling the relationships, based on existing agreements, between host countries and international organizations. But the United States was not persuaded that a convention was immediately necessary. Other more urgent items already had claims on the Organization's limited resources. The length and technical complexity of the draft would mean that the Sixth Committee's time would be taken up with it for two or more years. It would be more rational to convene a conference of plenipotentiaries to study both the draft articles on the representation of States, and drafts on one or more related topics. In the meantime States could refine the suggestions for improving the draft articles made during the Committee's discussions or in the written comments. That procedure would leave the Committee free to give its full attention to the many other important issues before it.

15. Mr. FABIÁN (Czechoslovakia) said that the draft articles represented a further achievement in the codification of diplomatic law that was welcomed by Czechoslovakia because it was highly desirable to regulate the status of representatives of States accredited to international organizations. There should be no difference in that context between member States or observer States if the principle of equality between the representatives of States was to be applied. In general the draft articles were satisfactory, but his Government considered that some amendments were needed, as it had indicated in its comments (see A/8753). Provided they were amended to take account of the views of the various States, the draft articles would provide an excellent basis for codification.

16. Czechoslovakia considered that it would be appropriate for the discussion of the draft articles to continue in the Sixth Committee, and not in a special conference of plenipotentiaries. Among the most convincing arguments for that view was the fact that the Committee had already considered the question more than once and was familiar with the views of States on the subject, that it constituted the best forum because of its universal character, that it had the necessary time, and that its choice would obviate the expenditure that a conference would entail for the United Nations and its Member States.

17. Mr. AKL (Lebanon) said that the conclusion of a convention on the representation of States in their relations with international organizations would bring to a successful conclusion the work already done in the field of diplomatic law, and that the draft articles prepared by the Commission would provide a good working basis. As to the procedure to be followed in adopting the convention, he largely endorsed the arguments of those who advocated entrusting the text to the Sixth Committee. His delegation also recognized that the holding of a diplomatic conference would be very costly both for the United Nations and for the States concerned. However, since the draft convention was long and complex, and required careful and detailed study by skilled jurists, it appeared that a conference of plenipotentiaries would be the most suitable procedure for the adoption of the convention. Moreover, the Committee had a very full work programme, and was called upon in particular to study the draft articles on the protection of diplomatic agents. For those essentially practical reasons, his delegation would vote for the convening of a diplomatic conference.

18. Mr. RAO (India) paid tribute to the Commission and its Special Rapporteur on the question of representation of States for their excellent work which had brought the codification of diplomatic law a stage nearer to completion. The draft articles submitted by the Commission met a real need. He believed that before considering the most appropriate forum for the conclusion of the convention, it would be well to think about the most appropriate date for taking up the final stage of the process of codification that had been embarked on. He had no doubt that the draft articles constituted a good basis for the adoption of a convention. However, some of the provisions needed further reflection, such as those on permanent missions, permanent observer missions, and delegations to organs and conferences of international organizations. His delegation would therefore prefer that no immediate action should be taken, but that the question should be included in the provisional agenda of the twenty-eighth session of the General Assembly.

19. Mr. TUBMAN (Liberia) said that Liberia in general supported the draft articles, which appeared to be in harmony with the Vienna Convention on Diplomatic Relations. But the text was one of several that were close to reaching or had reached the final stage of elaboration. The growing number of draft articles awaiting adoption indicated a healthy activity in the codification of international law. However, that activity called into question the suitability of the procedure followed thus far, which was to

convene a special conference of plenipotentiaries whenever the drafting of a set of articles was sufficiently advanced to make its adoption feasible. For the second time in a few days, the Sixth Committee was considering whether the final elaboration of a set of articles should be undertaken by a conference of plenipotentiaries, or by the Committee itself. That suggested that the old method was no longer wholly satisfactory.

20. He was convinced that the convening of a conference of plenipotentiaries was the best and most rapid means of concluding a convention, since the delegates to a conference were chosen by their Governments specifically to deal with the subject, and were concerned only with the text being considered by the conference. But the proliferation of drafts, and the need to avoid any excessive expenditure, imposed on the Committee the duty of balancing the need to economize with the duty of promoting the speedy and efficient codification of international law. The answer to the dilemma was not as simple as it appeared to those who almost automatically suggested that draft conventions should be adopted in the Sixth Committee. Closer examination might show that the final drafting of a convention in the Sixth Committee was less economical than it might seem, since it would necessarily take longer. Moreover, there was the question of the Committee's role: whether the Committee should be a legislative arm of the General Assembly, or continue to work closely with the Commission in drafting and codifying international law and leave it to a specifically convened conference to dispose finally of the fruits of its labours. His delegation supported the second solution, and believed that if the Sixth Committee was made permanently responsible for the final elaboration of draft conventions, the process of codifying international law would be deprived of one essential state.

21. In the present case a compromise solution was needed. He would accordingly suggest continuing the practice of forwarding draft articles to a diplomatic conference for definitive drafting but that such a conference should be convened, save in cases of great urgency, only when two or more draft conventions, or a convention of substantial length or complexity, were ready for completion. That method would have the advantage of leaving the Committee free to carry its share of the workload of the General Assembly, and to perform its deliberative and reflective role in the codification and progressive development of international law, for which it had been justly acclaimed. By adopting a decision in that sense without delay, the Committee would avoid lengthy debates on questions of procedure and would be able to devote its time to the important questions of substance on its agenda. His delegation was therefore of the opinion that the draft articles on the representation of States in their relations with international organizations should be submitted to a conference of plenipotentiaries, but that that should not be done until at least one further draft convention in a related field was available for submission to the same conference.

22. Mr. BAULIN (Byelorussian Soviet Socialist Republic) said that there were already a number of international conventions in the field of diplomatic law, but that the present draft articles filled an important gap. Their

provisions were on the whole in line with existing practice and could be regarded as a sound basis for the conclusion of a convention. As his delegation had wished, the draft conferred on the representatives of States accredited to international organizations a status identical to that of ambassadors accredited to Governments. Certain provisions were, however, open to objection, especially articles 23 and 54 on the inviolability of premises. That inviolability should be absolute, as provided in article 22 of the Vienna Convention on Diplomatic Relations.²

23. With regard to the adoption of the convention, he agreed with those speakers who had said that they would like the matter to be dealt with by the Sixth Committee. The Committee was a legal body particularly well qualified for the purpose, and there would be no difficulty about the presence of observers from interested international organizations, since the latter were all represented at United Nations Headquarters. As the Committee already had a crowded schedule of work ahead of it, his delegation thought that the date fixed for the definitive elaboration of the draft should be one that was acceptable to the majority of its members.

24. The Netherlands representative had said (1340th meeting) that international organizations had already participated as equal partners in a number of international agreements. However, in proposing that representatives of international organizations should be invited to participate in the final elaboration of the draft convention on the same footing as States, he had forgotten that the organizations in question, for all their size and importance, had only a limited legal status; they expressed the will of their member States or of the majority of those States. In becoming parties to international agreements they merely reflected, directly or indirectly, the will of that majority. The Netherlands proposal would establish a dangerous precedent, since it could mean that international organizations would become, in the case envisaged, independent of the will of their member States. His delegation was therefore categorically opposed to the proposal in question.

25. Mr. ELARABY (Egypt) said that his country was aware of the importance of completing the codification of diplomatic law by a convention on the relations between States and international organizations. The task was all the more urgent in view of the increasing role of international organizations in the conduct of international relations.

26. The Commission's draft articles were a contribution not only to the codification of the field of law in question but also, in large part, to its progressive development. A balance between the interests of States and the proper conduct of the work of international organizations was, however, difficult to achieve, as various countries had already pointed out. The draft convention would therefore undoubtedly undergo several changes before it could be

²See 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.

adopted. In general, however, his delegation considered it acceptable.

27. His delegation was gratified to hear the tribute paid by several representatives to the efforts and contribution of Mr. El-Erian, the Special Rapporteur, and would like to acknowledge with gratitude, on behalf of him, the appreciation extended to him.

28. With respect to the procedure to be followed for the definitive elaboration of the draft articles, his delegation thought that the task should be entrusted to a conference of plenipotentiaries and not to the Sixth Committee. Among the many considerations which made that course desirable was the fact that, when the Sixth Committee had dealt with the Convention on Special Missions, it had appeared that its members had neither the time nor, perhaps, the expertise required for such a delicate legislative task. Furthermore, the task of considering a draft composed of 82 articles would be a burdensome addition to the Committee's agenda and might prevent it from dealing with other urgent matters. Nor should it be forgotten that the Commission itself had recommended the convening of a conference.

29. Even if the conference could not meet in the near future, the decision to hold it should be made forthwith; the date could be settled later. He sincerely hoped that Austria's offer to act as host to the conference would be accepted by the General Assembly.

Mr. Velasco Arboleda (Colombia), Vice-Chairman, took the chair.

30. Mr. ESPEJO (Philippines) said that his Government had commented orally on the draft articles at the previous session (1259th meeting) during the discussion of the Commission's report on its twenty-third session, and had also submitted written observations, which were reproduced in document A/8753/Add.1.

31. With regard to the procedure to be followed, his delegation still thought, as it had done in 1971, that the elaboration of the draft convention should be entrusted to the Sixth Committee. The convening of a conference would involve the United Nations and Governments, especially those of small developing countries, in excessive expenditure. It could not be claimed that a conference would be more competent than the Sixth Committee, which numbered eminent jurists among its members; moreover, the General Assembly could always invite Member States to send their leading experts to the Committee.

32. Consideration of the draft should be facilitated by the fact that many of the articles were based on existing conventions in the field of diplomatic law and on headquarters agreements. Moreover, if, as certain delegations had said, it was not really urgent, the General Assembly could decide to spread it over two sessions of the Sixth Committee. If the General Assembly did convene a conference, it would be appropriate for reasons of economy that it should be held at New York; his delegation would, however, prefer the necessary codification of international law to be entrusted to the Sixth Committee.

33. Mr. OTSUKA (Japan) said that his delegation was still convinced that it would be preferable to convene a conference of plenipotentiaries, since everyone knew that the Sixth Committee's programme of work would continue to be very heavy during the coming sessions. At the twenty-eighth session, it would have to deal with a most urgent matter, namely the final adoption of the draft articles on the protection of diplomats. According to the estimates by the Secretariat contained in document A/C.6/L.853, that task would take three weeks. There were also such traditional items as the consideration of the reports of the International Law Commission and the United Nations Commission on International Trade Law, each of which would require about a week. The Committee would therefore have to sacrifice important items if it was to make itself responsible for elaborating another convention based on more than 80 articles, not counting some 20 articles appearing in the annex.

34. In his delegation's opinion, the Sixth Committee had a different part to play. It was true that, as the main legal body of the United Nations and with eminent jurists among its members, the Committee was capable of drafting and concluding a convention. The codification of existing international law was, however, still far from complete and there was a constant need to bring the provisions of existing conventions up to date. Under such conditions, his delegation would prefer that the Committee refrain from direct involvement in the convention-making process. It should devote itself to examining the legal aspects of problems entrusted to it, suggesting solutions, referring the problems to appropriate bodies such as the International Law Commission and the United Nations Commission on International Trade Law, creating a similar organ if necessary and furnishing guidelines from time to time; but not to formulating a convention.

35. His delegation therefore supported the International Law Commission's recommendation (see A/8410/Rev.1, para. 57) regarding the convening of a plenipotentiary conference and, in view of the busy conference schedule foreseen for the near future, it thought that a decision as to the date of the conference should be deferred until the twenty-eighth session of the General Assembly.

36. Mr. CHARLES (Haiti), after congratulating the Special Rapporteur, stated that the draft appeared acceptable since it was in line with relevant law and current practice. It would provide a sound basis for discussion, although his delegation reserved the right to revert to certain of its provisions, especially those concerning the inviolability of the premises of missions and the protection of the interests of host countries.

37. While the elaboration of a draft convention by the Sixth Committee would have practical advantages from the point of view of small countries such as Haiti, the convening of a conference offered better chances of success and his Government was therefore in favour of it. That position did not imply any judgement as to the Sixth Committee's ability to perform the task.

The meeting rose at 4.55 p.m.