



Chairman: Mr. Paul Bamela ENGO (Cameroon).

**AGENDA ITEM 84**

**Report of the International Law Commission on the work of its twenty-second session (continued) (A/8010 and Corr.1 and 2)**

1. Mr. BONNEFOY (Chile) welcomed the progress made in the preparation of the draft articles on relations between States and international organizations appearing in chapter II of the report of the International Law Commission (A/8010 and Corr.1 and 2). His Government had prepared written comments on the subject, which his delegation would transmit to the Committee in due course.

2. With regard to succession in respect of treaties, his delegation fully endorsed the view that State practice showed that there was at present no general doctrine on the matter, which should, therefore, be regarded as a particular aspect of the law of treaties. Devolution agreements concluded between the predecessor State and the successor State should therefore be regarded as not applicable between the latter and a third State which had concluded a treaty with the former. Similarly, in the absence of any agreement expressly concluded to that effect between the third State and the successor State, any unilateral declaration by the successor State of its intention to maintain in force the treaties concluded by the predecessor State could not be regarded as binding on the third State.

3. His delegation fully endorsed the fundamental principle that a new State was not automatically bound by the treaties concluded by the predecessor State, which was, moreover, in conformity with the right of peoples to self-determination. That rule should not, however, be construed as an endorsement of the "clean slate" theory; what was, in fact, required was a thorough study of specific instruments, such as, for example, "dispositive", "territorial" or "localized" treaties, with a view to determining whether they constituted valid exceptions to the principle of the freedom of the new State in respect of treaties concluded by the predecessor State.

4. Current positive law did not sanction the principle of continuity with regard to State succession in respect of treaties; nor could the existence of such a rule be concluded on the basis of State practice, which was not sufficiently general, uniform and consistent in the matter and did not provide a sufficiently sound element of repetition.

5. With regard to State responsibility, his delegation believed that parallel but separate studies should be made

of responsibility for wrongful acts and responsibility arising from lawful acts and felt that it would be advisable, as the French delegation had pointed out (1188th meeting), to explore in the context of the latter all relevant cases of responsibility.

6. His delegation supported the proposal to extend the duration of the twenty-third session of the International Law Commission. He was gratified that the granting of scholarships to students from developing countries had enabled them to participate in the Geneva Seminar on International Law and expressed the hope that Spanish would become a working language of the Seminar.

*Mr. Houben (Netherlands), Vice-Chairman, took the Chair.*

7. Mr. BOFUNGA (Democratic Republic of the Congo) said first of all that his Government was currently engaged in a thorough examination of the draft articles on representatives of States to international organizations and that his delegation would make its final comments on the subject in due course. He drew the attention of the members of the International Law Commission to the importance for young States of the question of State succession in respect of treaties. Independence meant that a State had attained its majority, i.e. legal capacity. The exercise of sovereignty by young States created some delicate problems, particularly in respect of the treaties which the former administering Powers had concluded with third States and which were aimed, more often than not, at protecting the interests of the metropolitan country rather than those of the administered Territory. It was thus natural that new States, desirous of serving the interests of their people and affirming their autonomy, did not wish to be automatically bound by the treaties concluded by the former administering Powers.

8. His delegation strongly hoped that an increasing number of officials and students from developing countries would be enabled to participate in the Geneva Seminar on International Law, where they would be able to express the point of view of the new States and promote the search for appropriate solutions to the problems confronting them. It also hoped that the International Law Commission would be able substantially to advance its work at its next session.

9. Mr. SHITTA-BEY (Nigeria) emphasized the delicate nature of the work of codification and progressive development of international law which the International Law Commission had had to undertake at its last session. His delegation would transmit to the Committee as soon as possible the Nigerian Government's views concerning the draft articles on representatives of States to international organizations.

10. There were no provisions relating to permanent observer missions of non-Member States in the United Nations Charter or the Headquarters Agreements, or in General Assembly resolution 257 (III) of 3 December 1948 which dealt with permanent missions of Member States. The rules applying in the matter therefore derived from State practice.

11. With regard to the draft articles, he pointed out that the definitive version of article 1,<sup>1</sup> relating to the use of terms, could only be prepared later in the light of the other provisions of the draft. His delegation was gratified that the International Law Commission had recognized, in article 52, the need to enable States which were not members of international organizations to follow their work which was of interest to the international community as a whole, while safeguarding the essential autonomy of those organizations and upholding the principle of respect for their rules and practice. In that connexion, his delegation felt that it would have been advisable to refer in that article to the general interest of the international community, as recognized and acknowledged by the organizations concerned.

12. Turning to the matter of facilities, privileges and immunities of permanent observer missions, he recalled that according to one theory they should not be the same as for permanent missions to international organizations in view of the differences in the status and functions of the two types of mission. According to another theory, on the contrary, the representative and permanent character of the two types of mission was such that they should be granted similar facilities, privileges and immunities. His delegation, which inclined towards the latter view, noted with satisfaction that the Commission seemed to have endeavoured in its draft articles to maintain a proper balance between the interests of the host State and the need to facilitate as much as possible relations between permanent observer missions and the international organizations concerned.

13. His delegation was gratified to note that the Commission intended to complete at its next session the first reading of the draft articles on succession of States in respect of treaties, and it wished to express its appreciation to the Special Rapporteur, Sir Humphrey Waldock, for his outstanding work. His delegation also commended the progress made in the matter of State responsibility. In view of the Commission's very heavy programme of work for its next session, his delegation supported the proposal to extend the duration of that session and expressed the hope that the proposal would be adopted unanimously by the Committee. It hoped also that financial aid from the more prosperous States would continue to enable students and officials from less privileged countries, particularly the developing countries, to participate in the Geneva Seminar on International Law.

*Mr. Engo (Cameroon) resumed the Chair.*

14. Mr. JACOVIDES (Cyprus) welcomed the fact that the work of the International Law Commission on the progressive development and codification of international law,

faithfully reflecting the contemporary realities of the international community and international law, had led to the preparation and adoption of several important legal instruments, including the Vienna Convention on the Law of Treaties<sup>2</sup> and the Convention on Special Missions (see General Assembly resolution 2530 (XXIV), annex), which would certainly help to further the international rule of law. Relations between the International Law Commission, the Sixth Committee and the International Court of Justice should be strengthened, and the Commission should explore ways of associating Governments more closely with its work—for instance, by sending observers to its sessions—thereby improving the prospects of having its proposals accepted.

15. Referring to the draft articles drawn up by the Commission on permanent observer missions to international organizations and on delegations of States to organs and conferences, his delegation agreed with the Committee that, given the representative character of such missions and delegations, they could be accorded, *mutatis mutandis*, the same rights as permanent missions and special missions. He was well aware of the objections to that approach but considered that the alternative criterion proposed, according to which the facilities, privileges and immunities accorded to a permanent observer mission or delegation would be restricted to those which were required for the performance of its functions, was not sufficiently precise and would open the way to a subjective interpretation of the corresponding provisions. The lack of uniformity under the present system was unfair, particularly with respect to taxes.

16. It had been claimed that, if the Commission's approach was adopted, States might be somewhat reluctant to invite international conferences to meet in their territory or, more serious still, might have difficulty in accepting the resulting convention. His delegation believed that the latter point was valid and therefore appealed to all members of the Commission to work out a satisfactory compromise acceptable to most States.

17. His delegation also attached great importance to the succession of States and agreed that it should be considered within the general context of the law of treaties, and in particular the Vienna Convention on the Law of Treaties. It had noted with interest the Special Rapporteur's premise that the predecessor State's treaties did not become applicable as between the successor State and any third State party to them in consequence only of the conclusion of a devolution agreement. The contrary view would have been inconsistent with articles 34 to 36 of the Vienna Convention and with customary international law. Moreover, there did not appear to be any general doctrine in modern law of the succession of a new State to its predecessor's treaties, nor any legal presumption of continuity in cases of succession.

18. His delegation noted the progress achieved in the matter of State responsibility. It welcomed the close co-operation between the Commission and various bodies and organs concerned with international law and would support the proposal to extend in 1971 the duration of the

<sup>1</sup> See *Official Records of the General Assembly, Twenty-third Session, Supplement No. 9*, para. 28.

<sup>2</sup> A/CONF. 39/27 and Corr.1.

Commission's twenty-third session. He would like the Commission to include in its work programme a study of two particularly topical problems, namely, unlawful interference with international civil aviation and the protection of members of diplomatic and consular missions against acts of violence.

*Mr. Houben (Netherlands), Vice-Chairman, took the Chair.*

19. Mr. LIANG (China) supported the general proposals made in chapter V of the International Law Commission's report.

20. With regard to chapter II concerning relations between States and international organizations, he appreciated the work done by the Commission but thought that the legal implications of the draft articles required careful examination. In that connexion he recalled that, as early as 1959, he had stressed the dangers inherent in any attempt to codify international regulations concerning missions and delegations in view of the diversity of the international instruments already existing. While the United Nations should indeed encourage the sending of observer missions, no legal basis could be found in the Charter for according such missions the privileges and immunities required for the performance of their functions.

21. The draft articles on permanent observer missions and delegations of States to organs and conferences could also be criticized on the grounds that they were too closely modelled on the Vienna Convention on Diplomatic Relations.

22. Another important point had to be taken into account: twenty-five years after the adoption by the General Assembly of the General Convention on the Privileges and Immunities of the United Nations (resolution 22 A (I)) the host State, i.e. the United States of America, had only recently acceded to it. It was difficult to see how a new set of regulations on the same subject would constitute an advance. It was true that, in the interest of greater flexibility, the draft articles contained a stipulation comparable with the provisions of article 73 of the Vienna Convention on Consular Relations,<sup>3</sup> which stated that the provisions of that Convention did not affect other international agreements in force as between States parties to them. In the case in point, however, the situation was not the same. Consular conventions were usually bilateral agreements, whereas in the case of permanent observer missions to international organizations and delegations of States to organs and conferences it was mainly multilateral instruments that were involved.

23. The rejoinder to all those criticisms could be, and indeed had been, that it was always possible to codify a number of general principles. But the draft articles did not purport to set forth general principles; they contained practical provisions. The question therefore arose as to whether their adoption would lead to the establishment of a new code or the merger of all previous instruments. Such a result could hardly be hoped for; unhappily it seemed

<sup>3</sup> See United Nations Conference on Consular Relations, *Official Records*, vol. II (United Nations publication, Sales No.: 64.X.I), p. 175.

more likely that the outcome would merely be to add yet another convention to the more than one hundred already existing in that field.

24. Turning to a different subject, he drew the Committee's attention to the exchange of correspondence indicated in paragraph 11 of the report. He welcomed the fact that the Government of the Netherlands had brought up the serious matter of attacks on diplomatic agents, which might jeopardize the International Law Commission's efforts to improve international relations, particularly when such attacks were not always attributable to uncontrollable elements but were occasionally encouraged by the authorities, if they did not indeed constitute an act of national policy.

25. With regard to the organization of the International Law Commission's work, he favoured the establishment of the Sub-Committee on treaties concluded between States and international organizations or between two or more international organizations. In the part dealing with State responsibility, he welcomed the statement of the Chairman of the International Law Commission that the Special Rapporteur had been asked to append to the draft articles in his next report detailed commentaries containing historical antecedents and discussions of different approaches from the doctrinal point of view. As a matter of fact, such commentaries to the draft articles to be prepared by the Commission was called for by article 20 of the Statute of the International Law Commission.<sup>4</sup>

26. As to the future work of the Commission, he pointed out that the term of office of its current members would end in 1971 and new elections would therefore be held. His delegation hoped that at that time due regard would be given to the principle of proportional representation, not only on a political or geographical basis but also in such a way that professors of law, government representatives, diplomats and other practitioners of international law would be equally represented in the Commission. The Commission should not be composed exclusively of theoreticians but should include a sufficient number of persons concerned with the practical application of international law.

27. He emphasized that if the members of the Commission were prevented by their varied activities from devoting all their time to its work, they should at least be able to do so during its sessions. He therefore hoped that it would not have to meet at the same time as other commissions or organs.

28. Mr. BIGOMBE (Uganda) said that, with regard to relations between States and international organizations, his delegation had always favoured codifying the status of permanent observer missions in order to promote universality in international organizations. It was important to establish a set of rules creating a favourable climate, so that States or political entities which did not qualify for membership of an international organization would be persuaded to establish permanent observer missions to that organization. In general, greater emphasis should be placed on the duty of States to co-operate earnestly with

<sup>4</sup> See General Assembly resolution 174 (II).

international organizations, bearing in mind the fact that it was often difficult to distinguish between acts performed by a representative in the exercise of his official functions and acts performed by him outside those functions.

29. He welcomed the work done by the International Law Commission on the question of succession of States—a subject of special interest to new States, which did not want to be automatically bound by treaties concluded by the predecessor State.

30. His delegation hoped that the Commission would be able to meet for fourteen weeks in 1971, as it had requested. The seminars on international law were also useful and he hoped that developing countries would be enabled to participate in them in an appropriate manner.

31. Mr. SEATON (United Republic of Tanzania) endorsed the comments made at the 1188th meeting by the Jamaican representative concerning the timing of the consideration of the International Law Commission's report. In order to give Governments and delegations time to study the document thoroughly, it would be preferable to place it at the end, rather than the beginning, of the Committee's agenda.

32. He paid a tribute to the high quality of the draft articles on permanent observer missions to international organizations and on delegations of States to organs and to conferences. His Government's observations on the subject would be transmitted to the Secretary-General in due course. The Commission had not thought it necessary for the time being to consider the question of temporary observer delegations and of delegates to conferences not held under the auspices of international organizations. Those categories would include the representatives of liberation movements and the delegates of peoples who were victims of colonialism, racial discrimination or *apartheid*, whose attendance at meetings of intergovernmental and non-governmental organizations was becoming increasingly important. His delegation therefore hoped that the Commission would soon take up the matter and provide some guidance on the status and privileges to be enjoyed by such persons.

33. The Special Rapporteur for succession of States in respect of treaties had proposed the definition "the replacement of one State by another in the sovereignty of territory or in the competence to conclude treaties with respect to territory". He wondered whether that definition was broad enough. It did not cover cases in which a revolutionary Government assumed power in a country and did not consider itself bound by all the treaties concluded by the Government preceding it. Although, properly speaking, those were cases of succession of Governments, it might be hoped that the International Law Commission would provide some clarification on the law applicable.

34. With that reservation, the Special Rapporteur was to be congratulated on his positive approach to the task entrusted to him. He had avoided taking the position, held by some eminent jurists, that treaties automatically continued in force when one State succeeded another and that the new members of the international society should adopt without question the rules laid down by its founders. Such a position gave new States no opportunity to exercise their fundamental right of self-determination.

35. The Special Rapporteur stated that the expression "new State", in article 1, paragraph 1 (e), meant a succession where a territory which previously formed part of an existing State had become an independent State. That definition seemed to imply that succession in its purest form occurred when a colonial territory attained independence and that unions of States, such as the union of Tanganyika and Zanzibar, which would no doubt become more frequent in Africa and other developing regions of the world, should be regarded as particular cases of succession. It was encouraging to note in that connexion that the Special Rapporteur had promised to consider in his next report whether some changes in that definition might not be desirable.

36. His delegation noted with interest that the Special Rapporteur had taken the position that a general unilateral declaration would not by itself have the effect of rendering the predecessor State's treaties applicable as between a successor State and third States parties to them. Without raising any objection to that negative formulation, his delegation wished to know whether, as a corollary, the principle stated in a positive form would be acceptable.

37. On the question of State responsibility, the Commission had distinguished between responsibility for international wrongful acts, which it had decided to consider first, and responsibility arising from certain lawful acts. It might be useful for the Commission to consider international responsibility arising from a third category of acts which fell half way between lawful and wrongful acts, such as pollution of the atmosphere or the oceans with radioactive substances or deadly gases, which might be described as lawful but dangerous.

38. His delegation was in favour of the Commission's twenty-third session lasting for 14 weeks. In view of the importance of the Commission's codification tasks, it should be enabled to work harder. He expressed the hope that more officials of the Office of Legal Affairs who were nationals of developing countries would be given the responsibility of servicing the Commission.

39. The term of office of the present members of the Commission was coming to an end. But it would never complete its work. As the world changed, new problems would arise and new rules would have to be drawn up. The Sixth Committee should already endorse the direction followed by the Commission and the trend which was emerging.

*Mr. Engo (Cameroon) resumed the Chair.*

40. Mr. KLAJKOWSKI (Poland) emphasized the exceptional quality of the work done by the Commission. Never before had such perseverance been displayed in the development of international law. The Commission had approached its task from the point of view of what was possible law rather than what was ideal. It had also taken full account of the fact that the world was made up of groups of States with very different structures and ideologies and had managed to remain impartial.

41. With regard to the question of permanent observer missions to international organizations, he criticized the

wording of article 52, which seemed too vague. Paragraph (1) of the general comments preceding article 51 listed the States that had established permanent observer missions at United Nations Headquarters but failed to mention States which had not been allowed to establish observer missions. The “practice of the Organization” referred to in article 52 was perhaps not above reproach, in view of its devotion to universality, which had been stressed by the Secretary-General on various occasions. The Polish criticism was primarily a legal one. Article 52 did not clearly define the status of all non-Member States in relation to the United Nations. The International Law Commission should reconsider that article in the light of the remarks he had just made.

42. The part of the report dealing with the succession of States in respect of treaties was of great theoretical and practical value. The definitions it contained were a step forward in the codification of international law.

43. With regard to chapter IV of the report, on State responsibility, the method adopted had already produced definite results and would undoubtedly prove useful in the future.

44. The Commission had requested that its 1971 session should last for 14 weeks. In view of the financial implications of that proposal, the Committee should hold consultations with the competent bodies before taking a decision on the matter. In addition, the Commission should include in its programme of work the question of international watercourses, which had been proposed by Finland for examination by the General Assembly (A/7991).

45. He emphasized the value of the Seminar on International Law, organized in collaboration with the Commission, and supported the proposal of the representative of Iraq (1886th meeting) that the younger jurists on the Committee and particularly those from the developing countries should have an opportunity to participate. Since the Committee was beginning to resemble a conference of government experts on international law, such participation would be particularly valuable.

46. Mr. AL-ATRACHE (Syria) said his delegation very much hoped that all non-member States of the United Nations, without exception, would be allowed to send permanent observer missions to United Nations Headquarters if they so wished. That would be in keeping with the desire for universality expressed by the majority of member States and by the Secretary-General himself. The time had come for the Secretary-General to invite non-member States to send a permanent observer mission; the invitation would in most cases receive a positive response. Such a move was particularly necessary, since there was discrimination between States in the same *de jure* situation, some of which were accepted as observers while others were not.

47. With regard to article 67 of the draft articles on representatives of States to international organizations, he expressed concern about the instances of failure to respect the inviolability of the premises of permanent missions. In recent years, the Permanent Mission of Syria to the United Nations had been attacked by saboteurs on several occasions. Even more recently, a bomb had exploded in the premises of the Permanent Mission of Kuwait, just as Kuwait's Minister for Foreign Affairs had been making a statement to the General Assembly. The members of the Committee should ask the host country what measures it had taken to protect the inviolability of the premises of all the permanent missions accredited to the United Nations and to give representatives a sense of security in accordance with the spirit of the Charter.

48. With regard to the part of the report dealing with the succession of States in respect of treaties, he emphasized the great importance which his delegation attached to the fundamental principle set forth in paragraph 44, under which a new State was not to be considered as bound by any treaty concluded by its predecessor or as under any obligation to become a party to such a treaty. That principle was particularly applicable to “dispositive” or “territorial” treaties.

49. His delegation was in full agreement with the criteria laid down by the Commission in paragraph 66, in the chapter of its report dealing with State responsibility, and welcomed the co-operation which existed between the Commission and the International Court of Justice, since the work of both bodies was essentially legal. Those links had become even closer since members of the Court had for the past few years been chosen from members of the Commission. The links between the Commission and the Asian-African Legal Consultative Committee, the European Committee on Legal Co-operation and the Inter-American Juridical Committee were also most welcome. His delegation supported the Commission's request concerning the length of its 1971 session. In spite of the additional costs entailed, the extension requested was justified by the results that could be expected. The Seminars on International Law were of paramount importance, and it was to be hoped that they would be continued. He supported the suggestion made by the representative of Iraq and hoped that the younger representatives on the Committee would have an opportunity to take part in the Seminars and thus be able to follow the work of the International Law Commission more closely.

50. He stated that the remarks he had made were without prejudice to any more detailed comments that might be submitted by his Government when it had duly examined the documentation.

*The meeting rose at 1.15 p.m.*