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Chairman: Mr. K. Krishna RAO (India).

AGENDA ITEM 84

Report of the International Law Commission on the work of its twentieth session (A/7209 and Corr.2)

1. The CHAIRMAN invited the Committee to begin consideration of the item on its agenda entitled "Report of the International Law Commission on the work of its twentieth session".

2. Mr. RUDA (Chairman of the International Law Commission),[1] introducing the report of the International Law Commission on the work of its twentieth session (A/7209 and Corr.2), said that in the course of that session, which had marked the twentieth anniversary of its establishment, the International Law Commission had begun active consideration of two important topics which had been on its agenda for some time but which it had until then been able to consider only in a preliminary way. Those topics were: succession of States and Governments, and relations between States and international organizations. The Commission had also given preliminary consideration to the most-favoured-nation clause and had undertaken a review of its programme and methods of work with a view to benefiting from its long and fruitful experience.

3. The topic at the most advanced stage of preparation was that of relations between States and international organizations; that topic, consideration of which had been undertaken in 1959 at the Commission's eleventh session pursuant to General Assembly resolution 1289 (XIII), had subsequently been the subject of a number of reports the most recent of which, submitted to the International Law Commission at its twentieth session by the Special Rapporteur, Mr. Abdullah El-Erian, contained a full set of draft articles on the legal position of representatives of States to international organizations.[2] Those draft articles were concerned with permanent missions to international organizations, delegations to sessions of organs of international organizations and to conferences convened by such organizations, and permanent observers from non-member States to international organizations.

4. The Commission had been able to consider only the articles in part I, containing general provisions, and those in part II, section 1, relating to permanent missions to international organizations. It had studied those first articles in relation to the corresponding provisions of the 1961 Vienna Convention on Diplomatic Relations,[3] the 1963 Vienna Convention on Consular Relations[4] and the draft articles on special missions,[5] as also of the existing instruments concerning the headquarters of international organizations and the privileges and immunities of the United Nations and other international organizations.

5. Beginning with the title of the topic, the International Law Commission had decided to replace the expression "intergovernmental organization" by "international organization". It had also decided that its work would take the form of draft articles entitled "Draft articles on representatives of States to international organizations", since it considered that the draft convention which was eventually to be prepared should relate only to that specific aspect of the topic, and that the other aspect—the question of representatives of international organizations to States—was not among the subjects which should be considered at the Commission's twentieth session.

6. With reference to the general provisions of the draft articles, the definitions given in article 1 were merely provisional in the sense that they could be modified, expanded or narrowed as might appear necessary from the examination of the other articles. He noted in particular that the Commission intended to harmonize, if necessary, the definition of the expression "international organization" with the corresponding provision of the convention on the law of treaties which was to be adopted in the near future, that being a procedure it always tried to follow when drawing up a new instrument containing definitions and provisions based on those of existing instruments.

7. One of the questions which had been dwelt on at length was the scope of the draft articles, opinions having differed as to whether that text should also apply to representatives of States to regional organizations. The Commission had succeeded in composing those differences and had adopted an intermediary solution that was contained in article 2 of the draft

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[1] The complete text of the statement made by the Chairman of the International Law Commission was subsequently circulated as document A/C.6/L.647.

[2] A/CN.4/203 and Add.1-5.

[3] See United Nations Conference on Diplomatic Intercourse and Immunities, Official Records, vol. II (United Nations publication, Sales No.: 62.X.1), p. 82.

[4] See United Nations Conference on Consular Relations, Official Records, vol. II (United Nations publication, Sales No.: 64.X.1), p. 175.

[5] See Official Records of the General Assembly, Twenty-second Session, Supplement No. 9, chapter II.

articles. Although that article referred only to representatives of States to international organizations of universal character, it also stated that the fact that the articles did not refer to representatives of States to other international organizations was without prejudice to the application to those representatives of any of the rules set forth in the article.

8. A thorough study had been made of articles 3 and 4, concerning, respectively, the relationship between the draft articles and the relevant rules of international organizations and the relationship between the draft articles and other existing international agreements. The problem was to determine the position of the draft articles in relation to the many rules which had been or might be adopted to govern relations between certain States and certain international organizations. As was stated in the commentary on article 3, the draft articles merely sought to detect the common denominator and lay down the general pattern regulating the diplomatic law of relations between States and international organizations, their purpose being the unification of that law to the extent feasible at the present stage of development. Article 3 sought to safeguard the particular rules which might be applicable in a given international organization and accordingly provided that the application of the draft articles was without prejudice to any relevant rules of the organization. The expression "relevant rules" should be understood to mean all relevant rules, whether those set forth in the constituent instrument of the organization concerned or in its resolutions, or those deriving from the practice prevailing in that organization.

9. Articles 4 and 5 regulated the relationship between the draft articles and the other international agreements in force between States or between States and international organizations. That was an extremely important question, because to a certain extent the text which the International Law Commission was formulating could affect existing international agreements regulating the same subject, such as headquarters agreements and conventions on privileges and immunities. Aware of that problem, the Commission had specified in its commentary that the draft articles, while intended to serve as a general pattern and a uniform rule, were without prejudice to different rules which might be laid down in such agreements and conventions.

10. Article 5 related to future agreements which might contain provisions in conflict with some of the rules laid down in the draft articles. The Commission was anxious to ensure the maximum flexibility in the matter; therefore, although it hoped that the draft articles would serve as the basis for conventions relating to the representatives of States to particular international organizations, it had not wished to restrict the freedom of States which at some time in the future might find it necessary to adopt different rules concerning their representation in such organizations.

11. He had dwelt at some length on the first articles of the draft in order to emphasize the legal difficulties faced by the Commission when taking up its tasks; however, it had succeeded in overcoming them and in laying down clear and simple rules which would greatly facilitate the work on the other parts of the text.

12. Part II, section 1, concerning permanent missions in general, laid down basic rules governing the functioning of permanent missions. It was based to a very large extent on the Vienna Conventions on Diplomatic Relations and on Consular Relations, as also on the draft articles on special missions, the provisions of which had been adapted to the special requirements of permanent missions to international organizations. In the commentary accompanying the articles in that section, the Commission had in many cases shown the similarity between the rule in the draft articles and the corresponding rule of the instrument on which it was based, indicating the reasons for any changes. There again, the Commission had sought to make the rules as flexible as possible in order to facilitate the work of permanent missions. For example, article 6 made it clear that the institution of permanent representation to an international organization was of a non-obligatory character, and article 7 listed the most important functions of permanent missions under broad headings, as did the Vienna Conventions and the draft articles on special missions.

13. Also with a view to facilitating the work of missions, provision had been made in article 8 for the same person to be accredited as permanent representative to two or more international organizations and for the sending State to assign a permanent representative as a member of another of its permanent missions; that rule applied equally to members of the staff of permanent missions.

14. Article 10 contained a very important rule, namely, that, subject to certain exceptions relating to the nationality of the members of the permanent mission (article 11) and the size of the permanent mission (article 16), the sending State might freely appoint the members of the permanent mission. That freedom of choice, which was a principle basic to the effective performance of the functions of the mission, was justified by virtue of the fact that the members of a permanent mission were not accredited to the host State in whose territory the seat of the organization was situated. The consent of the host State was necessary—and that was the first exception—only if the permanent representative and the members of the diplomatic staff of the permanent mission were chosen from among the nationals of that State. The second exception also restricted the freedom of choice of the sending State by imposing an obligation to keep the size of the permanent mission within the limits of what was reasonable and normal, having regard to the functions of the Organization, the needs of the mission, and the circumstances and conditions in the host State. Experience showed that, as yet, no serious problem had ever arisen in that connexion. The Commission considered that if any difficulties were to arise, they could be settled only by consultations between the sending State, the host State and the organization, it being understood that the sending State must be wholly free to decide on the composition of its permanent mission and to choose its members.

15. As for the credentials of the permanent representative, a subject dealt with in article 12, the Commission had followed the practice of the international

organizations regarding the source of issuance. Moreover, while it was true that the credentials of permanent representatives were usually transmitted to the chief administrative officer of the Organization, there was no consistent practice as to which organ that officer should report to on the matter, and the Commission had laid down a general rule providing for such credentials to be presented to "the competent organ of the organization".

16. Article 13, which dealt with accreditation to organs of the organization, was based on the principle that the permanent representative represented the sending State on all the organs of the organization for which there were no special requirements as regards representation. Nevertheless, it was still possible for the sending State to specify in the credentials that its permanent representative represented the State solely on such and such an organ of the organization or on several specified organs.

17. Article 14, relating to full powers in the conclusion of treaties, was based on article 6 of the draft convention on the law of treaties.[6] It specified in particular that such powers were not necessary when it appeared from the circumstances that the intention of the Parties was to dispense with them.

18. Article 17 on notifications, article 18 on the chargé d'affaires ad interim and article 21 on the use of flag and emblem were similarly patterned on the corresponding provisions of the Vienna Convention on Diplomatic Relations. Article 19 dealt with precedence, which could be determined by the alphabetical order or according to the time and date of the submission of credentials. Article 20 laid down that the consent of the host State was required for the establishment of offices of permanent missions in localities other than that in which the seat of the organization was established or in the territory of a State other than the host State.

19. He concluded his statement on the twenty-one articles which the International Law Commission had drawn up on the question of the representatives of States to international organizations by emphasizing that the complexity of the juridical problems was due to the fact that consideration had to be given to the interests of three parties: the sending State, the organization and the host State.

20. Turning to the question of the succession of States and Governments, he pointed out that only the question of the succession of States had so far been studied; the succession of Governments would be considered later. He recalled that, in 1967, the International Law Commission had decided to divide the question of the succession of States and to consider it under two headings, which had been entrusted to two Special Rapporteurs—Sir Humphrey Waldock for "Succession in respect of treaties" and Mr. Mohammed Bedjaoui for "Succession of States in respect of rights and duties resulting from sources other than treaties". At its twentieth session, the Commission had had before it the first reports of the Special Rapporteurs, which had been considered separately.

[6] See A/CONF.39/C.1/L.370/Add.4 and Corr.1.

21. In his report,[7] Mr. Bedjaoui had dealt in particular with methods of work, the types of State succession ("dismemberment", "decolonization" and "merger") and the specific problems of new States (succession in matters relating to public property, public debts, the legal régime of the predecessor State, territorial problems (particularly in questions of frontiers and servitudes), the status of inhabitants and acquired rights). At the request of the Commission, made after the general debate on the report, the Special Rapporteur had prepared a list of preliminary questions relating to points on which he wished to have the Commission's views.

22. The Commission had considered that, since the report dealt with the content and not the modalities of succession, it was better to change the title to: "Succession in respect of matters other than treaties". It had also considered it premature to draw up a general definition of State succession to which the two Special Rapporteurs would refer, and it had felt that, in the consideration of the question, the best course would be to continue to combine the technique of codification with that of the progressive development of international law. It had taken no final decision on what form the work should take and had requested the Special Rapporteur to prepare a set of draft articles or a set of rules.

23. The members of the Commission had considered it inadvisable to deal separately with the origins and types of State succession; it was sufficient to bear in mind the various situations, with a view to formulating a special rule for the case of a succession due to a particular cause.

24. An examination of the specific problems of the new States had shown that the present importance of the topic of State succession was due to the phenomenon of decolonization. The problems of the new States concerned not only the former colonial Power but also the community as a whole; they affected in particular the permanence of the acts performed by the predecessor State, since the elements of rupture tended to carry more weight than those of continuity. There was, it had been said, a need to establish rules which were as general as possible and to bring into relief the characteristic elements of the times. The International Law Commission had reached the conclusion that particular attention should be paid to the problem of new States, without, of course, neglecting the other cases of succession.

25. After deciding to defer the question of judicial settlement of disputes, the Commission, recognizing the scope and complexity of the task entrusted to the Special Rapporteur, had considered it desirable to give priority to the consideration of one or two particular aspects of the topic. Mr. Bedjaoui had thought it possible to start with the problems of public property and public debts, the associated questions of concession rights and government contracts, i.e., acquired rights, and problems of succession in respect of various kinds of economic resources, including the rights of peoples in regard to their natural resources. The Commission had decided that the Special Rapporteur should, for its next session,

[7] A/CN.4/204.

prepare a report on the "Succession of States in economic and financial matters".

26. The second report placed before the Commission had been that of Sir Humphrey Waldock on "Succession in respect of treaties".[8] The Special Rapporteur had submitted the first chapter of the draft articles on that topic. The chapter was entitled "General provisions", and it contained four articles of great importance, namely: "Use of terms", "International agreements not within the scope of the present articles", "Relevant rules of international organizations" and "Boundaries resulting from treaties". While the Commission had had a thoroughly interesting debate, it had not entered into a discussion of each of the articles and had not taken any formal decision on the topic.

27. One of the most debated topics had been whether the solution of the problems lay in the general principles of the law of treaties or in those of the law of State succession. According to the Special Rapporteur, the problems to be solved concerned the law of treaties but came within the special context of State succession. Like other members of the Commission, he had been of the opinion that, in the case of broad multilateral treaties, there was at least one fundamental rule based on widespread practice, namely, that a new State had the right to continue to apply the treaty to its own territory as a party in its own right, independently of the provisions actually appearing in the final clauses of the treaty regarding participation.

28. Another point taken up by the Commission had been whether or not the work of the Special Rapporteur should take the form of draft articles which either would lead to the possible conclusion of a convention or would form a continuation of the texts drawn up on the law of treaties. The Commission had noted that in 1969 Sir Humphrey would submit an independent group of articles on the topic of succession in respect of treaties.

29. Another basic question examined by the Commission had been the most-favoured-nation clause. The Special Rapporteur, Mr. Ustor, had submitted a working paper and a questionnaire with the aim of soliciting comments and guidance from the members of the Commission. The Commission had asked the Special Rapporteur not to confine his studies to the importance of the role of the most-favoured-nation clause in the domain of international trade but to explore the major fields of application of that clause and to deduce legal norms from the now generally accepted practices. It had also invited him to consult all organizations and interested agencies which might have particular experience in the application of the most-favoured-nation clause.

30. He then reviewed the decisions taken by the International Law Commission with regard to future work, pointing out that the Commission had felt that the useful working paper prepared for it by the Secretariat (A/7209 and Corr.2, annex) would enable the members of the Sixth Committee to be completely informed of the points under consideration.

[8] A/CN.4/202.

31. The Commission had decided, first, to propose to the General Assembly that the term of office of its members should be extended to six or seven years, since a programme of work could hardly be completed in five years both because of changes in the Commission's membership and because the larger membership tended to prolong the discussions. It had also pointed out that the general need of codification called for the increased ability to plan and execute a balanced programme.

32. Secondly, it had deemed it necessary to recommend to the General Assembly that a special allowance should be made available to Special Rapporteurs, since experience had shown that they often incurred expenses, particularly in consulting libraries and buying material.

33. Thirdly, it had felt that the staff of the Codification Division would have to be increased so that it could provide additional assistance to the Commission and its Special Rapporteurs. In that respect, it had recognized that the services rendered in existing conditions could not have been better, but they had entailed sacrifices on the part of staff, whose task should therefore be lightened.

34. The International Law Commission had agreed that it would give attention to its long-term programme of work before the term of office of the present membership expired. For that purpose, it had decided to ask the Secretary-General to prepare a survey on the lines of the memorandum published in 1948 entitled Survey of International Law in Relation to the Work of Codification of the International Law Commission,[9] in order to enable it to draw up, in 1970 or 1971, a new list of topics that were ripe for codification.

35. With regard to its present programme of work, the Commission had felt that before the present term of office expired, it could consider only four topics, namely, "State responsibility", "Relations between States and international organizations", "Most-favoured-nation clause" and "Succession of States and Governments", but it had also had to bear in mind that the United Nations Conference on the law of treaties had before it a draft resolution which to some extent entrusted to it a study of the topic of treaties between States and international organizations, or between two or more international organizations. With respect to the topic of State responsibility, the Commission had felt, in the light of General Assembly resolution 2272 (XXII), that it should expedite the study of that topic at the next session in 1969. That being so, and in view of the fact that it wished to complete within the period it had set itself the study of relations between States and international organizations and that of succession in respect of treaties, the Commission had had to envisage the possibility of meeting during the winter of 1970. It could at that time complete the first reading of the drafts relating to the two topics, which would then be submitted to Governments for observations and taken up again by the Commission at its twenty-third session. The Commission also expected in 1969 to undertake a detailed study of the topic of State responsibility, which would be given priority, and to study the topic of State succession in

[9] United Nations publication, Sales No.: 48.V.1 (1).

respect of matters other than treaties at the 1970 session. The topic of the most-favoured-nation clause would likewise be examined periodically up to 1971.

36. He pointed out that when the programme and methods of work had been under consideration, a member of the Commission, Mr. Ago, had expressed the opinion that the Commission could not ignore the fate of the conventions emanating from it and that it should endeavour to ensure the greatest possible number of accessions and ratifications. Mr. Ago had subsequently submitted a memorandum on the subject,[10] which contained some very interesting suggestions concerning, in particular, the usefulness of a General Assembly resolution providing that conferences meeting under the auspices of the United Nations to draw up general conventions should establish protocols of signature, a model of which would appear in the resolution. The signatory States would undertake, in the protocols of signature, all measures indicated in them to ensure that the competent authorities could come to a decision on ratification or accession or that the required reports would be submitted to the Secretary-General of the United Nations. The Commission had not taken a decision on that question, but it referred to it briefly in paragraph 102 of its report.

37. Turning to another aspect of the International Law Commission's activities, he said that within the context of its co-operation with other juridical bodies it had, during its twentieth session, continued to co-operated with the Asian-African Legal Consultative Committee, the European Committee on Legal Co-operation and the Inter-American Juridical Committee. Observers from those bodies had spoken before the Commission, and the Commission itself had been represented at meetings of those bodies.

38. The fourth session of the Seminar on International Law at Geneva had benefited, like previous meetings, from the active participation of various members of the International Law Commission. A larger number of scholarships had enabled more students than in previous years from the developing countries to attend. The Commission hoped that further offers of scholarships would enable another session of the Seminar to be held in 1969.

39. He expressed the Commission's special pleasure at the visit paid to it by the Vice-President of the International Court of Justice, Mr. Koretsky, and he referred to the natural link which should exist between the Court and the Commission in view of their respective roles.

40. In conclusion, he announced that, in order to mark its twenty years of activity, the International Law Commission had instructed him to submit to the Sixth Committee a general appraisal of the work it had accomplished. He proposed to do so at an opportune moment in the course of the present session.

41. The CHAIRMAN thanked the Chairman of the International Law Commission for the statement he had made, which would certainly be useful to the members of the Sixth Committee in their consideration of the report which had been submitted to them. The Sixth Committee would subsequently take a decision on the date when it would hear the report which had just been announced.

42. Mr. ALCÍVAR (Ecuador) proposed that the complete text of the statement by the Chairman of the International Law Commission should be issued as a document of the Sixth Committee.

43. Mr. STAVROPOULOS (Legal Counsel) said that the adoption of that proposal would have financial implications which would have to be taken into account.

44. The CHAIRMAN proposed that the Ecuadorian representative's request should be complied with, due consideration being given to the financial implications.

It was so decided.

The meeting rose at 12.30 p.m.

[10] A/CN.4/205/Rev.1.

Litho in U.N. 77601—May 1969—2,150