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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 (continued) (A/7209 and Corr.2; A/C.6/L.647)

1. Mr. SECARIN (Romania) said his delegation had always considered that the United Nations was playing an important role in ensuring the progressive development and codification of international law, thus serving the cause of world peace and progress. It believed, as the Latin adage had it, that justice should prevail in relations between States and in international morality.

2. One, and by no means the least, of the merits of the International Law Commission was that it had focused its work on practical areas concerning relations between States. That had enabled it not only to provide the international community with a set of rules governing diplomatic and consular relations, but also to draw up a draft designed to govern the conventional practice of States and a draft convention on special missions.

3. The Commission had also taken account of the evolution of relations between States, which over the past few decades had assumed a special character because of the realities of present-day international life, the development of international organizations and the emergence of new States, when it had given priority to such topics as "Relations between States and international organizations", "Succession of States and Governments" and "The most-favoured-nation clause".

4. His delegation wished to pay a tribute to the efforts of the members of the Commission, and particularly to those of the Special Rapporteurs, Mr. Abdullah El-Erian, Sir Humphrey Waldo, Mr. Mohammed Bedjaoui and Mr. Endre Ustor, who had enabled the Commission successfully to perform the tasks which it had set itself at its twentieth session. It also thanked the United Nations Secretariat, especially the Legal Counsel and the Director of the Codification Division of the Office of Legal Affairs, for the assistance they had given to the Commission.

5. Without wishing to go into a detailed analysis of the report, his delegation would like to refer to certain aspects of it which had engaged its attention and which might give rise to profitable exchanges of views between delegations. For example, with regard to the draft articles on representatives of States to international organizations, the purpose of which was to set out, as an autonomous unit, the rules of diplomatic law governing relations between States and inter-governmental organizations of universal character, it wished to point out that those relations differed in three respects from normal diplomatic relations between States. First, the nature of the subjects of international law concerned was different. Whereas a State, a sovereign entity, had an independent existence, an international organization did not exist in its own right; being made up of its component States, it was endowed with a legal personality which varied in extent, according to their will. Secondly, relations between a State and an international organization were part of a unique system under which each member State of the organization had relations, through the organization, with the other States which were members of that organization and which made a multi-lateral dialogue possible. Lastly, a third subject of international law was involved in the diplomatic relations between a State and an international organization—the host State, which offered its hospitality to the organization and its activities.

6. The Commission had based itself on the provisions of the 1961 Vienna Convention on Diplomatic Relations or other conventions or draft international conventions and had borne in mind the specific nature of the relations to which he had referred, when formulating rules concerning the establishment of permanent missions (article 6), accreditation (articles 8 and 9), and accreditation to organs of the organization (article 13). The Commission had also taken into account the situation of the host State when formulating rules dealing with the nationality of the members of the permanent mission (article 11), the size of the mission (article 16), the establishment of offices of the permanent mission (article 20), and the use of the flag and emblem (article 21).

7. In the view of his delegation, the draft articles should be subjected to proper scrutiny, with particular reference to the following points.

8. First, the definition of an "international organization of universal character", proposed in article 1 (b), could profitably be given greater precision, since the words "whose membership... on a world-wide scale" did not suggest clearly enough that the universal character should derive from the object and the purposes of the organization.

9. Secondly, in listing the functions of a permanent mission in article 7, it might be well to add "protecting the interests of the member State", as every mission obviously had the duty of protecting the interests of the State which it represented. In addition, the wording of sub-paragraph (c) of that article, concerning negotiations which should be carried on by the mission, should place the emphasis on negotiations in the organization by mentioning them first, instead of second, since missions should perform their functions primarily in the context of multilateral diplomacy. Again, since the purpose of diplomatic law was to help to promote co-operation and friendly relations between States, the provisions of sub-paragraph (e) of the same article should perhaps be brought in line with those of article 3, paragraph 1, of the 1961 Vienna Convention on Diplomatic Relations, and article 5 (b) of the 1963 Vienna Convention on Consular Relations, it being specified that one of the functions of a permanent mission consisted in promoting "friendly relations and co-operation between the member States". The Romanian delegation considered that the ultimate aim of diplomatic law was to contribute to the promotion of co-operation among States within the framework of friendly relations, which should be based on respect for the sovereignty and independence of States, for their personality and dignity and for their equal rights, and on the principles of non-interference in the affairs of other States and mutual advantage.

10. Thirdly, it might be well to draw up a rule concerning the commencement of the functions of the permanent representative and staff of the mission.

11. Fourthly, one might wonder whether it was desirable, in article 14, paragraph 1, to limit the rights accorded to a permanent representative, for the purpose of adopting the text of a treaty, by article 6, paragraph 2 (c), of the draft articles on the law of treaties.^{1/}

12. His delegation had noted that, in accordance with articles 16 and 21 of its Statute, the Commission had decided to transmit to Governments the provisional text of the twenty-one articles that it had prepared. In the view of his delegation, that text should also be transmitted to international organizations, whose comments might be helpful.

13. Concerning the topic of State succession in respect of matters other than treaties, his delegation shared the Commission's opinion that the study of that topic should combine the technique of codification with that of progressive development of international law. It also recognized that, without neglecting other causes of succession on that account, the specific problems of the States which had recently achieved independence should be given special attention, since the study of those problems would help to strengthen the sovereignty and the political and economic independence of the new States.

14. His delegation welcomed the Commission's efforts to establish closer ties with other legal bodies, such as the Asian-African Legal Consultative Committee, the European Committee on Legal Co-operation

and the Inter-American Juridical Committee, and the contribution it had made to the teaching, study and dissemination of international law through the Seminars held in conjunction with its sessions.

15. His delegation had taken note of the concern expressed by the Commission regarding the term of office of its members, the honoraria and *per diem* of its Special Rapporteurs, and the need to increase the staff of the Codification Division of the United Nations Office of Legal Affairs. It might wish to speak again on those questions after hearing the views of the members of the Committee.

16. In conclusion, his delegation hoped that the Commission would undertake as soon as possible a study of peaceful means for the settlement of international disputes. The codification of the rules followed in that field would surely help to improve international relations and to strengthen the authority and effectiveness of international law.

17. Mr. GOTLIEB (Canada) said that his delegation welcomed the Commission's decisions to request its Chairman to present at the current session an appraisal of its twenty years of activity and to ask the Secretary-General to bring up to date the survey of the whole field of international law undertaken in 1949 in relation to its work of codification. Those decisions were particularly timely in the light of the range and diversity of the activities which were under way within the United Nations in the field of the codification and progressive development of international law, such codification and development being the only sure means of building a world order based on the rule of law. It was obvious that not all codification work could be done by the Commission, and accordingly there could be no objection to the setting up of special committees for the purpose of developing and codifying the law on topics which were highly political or technical. As the Chairman of the Commission had pointed out, the work of other international bodies in the field of codification should help the Commission by enabling it to concentrate on a range of priority questions.

18. While there were sound reasons for the Commission's proposal that the term of office of its members should be extended from five to either six or seven years, the idea of regular meetings of the Commission twice a year, which had been proposed by his delegation on previous occasions, might also be given consideration. It was also necessary to bear in mind the need to ensure opportunities for jurists from many countries to serve on the Commission. That raised the more general question of honoraria for experts performing work under United Nations auspices, and in particular for the Commission's Special Rapporteurs; in that connexion, the United Nations must continue to ensure that it could obtain the services of the very best people and that there were no obstacles in the way of their work.

19. His delegation was gratified by the continued success of the sessions of the Seminar on International Law; while still believing that participation in them should be made available first to students of the developing countries, it thought that they could be beneficial to students from any country.

^{1/} A/CONF.39/C.1/L.370/Add.4.

20. In its draft articles on representatives of States to international organizations, which had a particular interest for Canada as a host State to an international organization, the Commission had sought to lay down certain general principles and at the same time to ensure appropriate recognition for existing and future international agreements between States and international organizations.

21. His delegation had noted that draft articles 10, 11 and 16 concerning the appointment and nationality of the members of the permanent mission and the size of the mission would require the consent of the host State when the sending State wished to appoint its representatives from among the nationals of the host State. Consideration might be given to the adoption of a rule whereby the sending State would be free to appoint nationals of the host State to represent it but the host State would have the right to withhold the granting of privileges to its own nationals who were members of the permanent missions of other countries. Further consideration should also be given to the position of landed immigrants, resident in the host country, who were members of permanent missions and whose position might be assimilated to that of nationals of the host country.

22. Draft article 15 did not give specific recognition to the practice of an increasing number of States of appointing deputy permanent representatives or associate representatives; consideration might be given to ensuring that the deputy or alternate representative enjoyed the status of permanent representative in the latter's absence.

23. With reference to draft article 16 concerning the size of the mission, which sought to take into account the interests of the missions, of the international organization and of the host State, his delegation fully endorsed the suggestion for the inclusion of a provision for consultation between the host State, the sending State and the organization concerned regarding the application of that and other articles, and it welcomed the indication by the Commission that it would consider the inclusion of a general article concerning remedies.

24. Lastly, it suggested that draft article 19 should specify the language of the alphabetical order referred to, in order to avoid any confusion.

25. With respect to the Commission's work on succession of States and Governments, his delegation was gratified at the good results achieved by dividing the topic into two parts entrusted to two different Special Rapporteurs. Concerning the first part, which related to succession in respect of matters other than treaties, it was in agreement with the emphasis that the Commission had attached to the problems of new States and decolonization. It nevertheless considered it desirable for the Commission to study other important areas of State succession—for example, economic integration.

26. Finally, regarding the organization of the Commission's future work, his delegation was most anxious that the Commission should begin substantive discussions of two topics mentioned in the report, namely, State responsibility and succession of States and Governments, both in respect of treaties and in

respect of other matters. It would very much like to see that work completed during the Commission's present term of office and would favour consideration of those two topics with priority over the most-favoured-nation clause. His delegation also attached particular importance to the topic of the juridical régime of historic waters, including historic bays. The amount of work awaiting the Commission underlined the need for it to introduce new methods, and his delegation was in favour of a winter session in 1970.

27. Mr. DELEAU (France) said that it would be advisable, for the time being, to restrict the application of the draft articles on representatives of States to international organizations to genuinely important universal organizations and not to extend their scope indiscriminately, as was provided in article 2, paragraph 1, to all international organizations even if they were universal in character. Similarly, his delegation endorsed the position that regional organizations should be excluded from consideration and that the proposed rules should not be extended to the representatives of international organizations to States.

28. As for the individual draft articles, article 3, providing that the application of the articles was without prejudice to the relevant rules of the organization, needed to be interpreted in a broad sense. As far as articles 4 and 5, on the relationship between the provisions of the draft articles and other existing international agreements, were concerned, he emphasized that his delegation was unable to subscribe to the opinion that the United Nations could be considered in a sense to be a party to the 1946 Convention on the Privileges and Immunities of the United Nations. On the other hand, it shared the views expressed by the Commission, in the commentary accompanying article 6 on the establishment of permanent missions, that any such establishment was subject to the general reservations laid down in articles 3, 4 and 5 concerning the relevant rules of the organizations, the existing international agreements and the possibility of derogation from the draft articles, respectively.

29. With regard to the second question studied by the International Law Commission, namely, succession of States and Governments, his delegation, in view of the diversity and complexity of the subject, endorsed the decision taken by the Commission to subdivide it and give priority to the study on the succession of States in respect of matters other than treaties.

30. It was important that the rules on problems of succession connected with decolonization should be clearly specified; France had solved such problems in full agreement with the new States, and its position on the subject would be based on its experience. Since, on the other hand—as some delegations had pointed out—the problems of succession connected with the decolonization process affected the whole international community, an effort must be made to reconcile and protect the legitimate interests of all concerned.

31. As to the priorities established for the study of the various aspects of the topic of succession in respect of matters other than treaties, his delegation thought that it would be advisable to subordinate the consideration of territorial questions to the progress made in the studies on succession in respect of

treaties. In view of their complexity and interdependence, those various studies should be organized as logically and as rationally as possible.

32. With respect to the International Law Commission's programme and methods of work, his delegation had little or no serious objection to the Commission's suggestions. Nevertheless, the memorandum submitted to the Commission, according to which States would be required to ratify conventions codifying international law, called for certain reservations on the part of his delegation. It also wondered whether the reasons put forward in support of the request that the term of office of the International Law Commission's members should be extended from five to seven years were well founded and whether those reasons were the only ones to be taken into account.

33. Also, the proposals that the staff of the Codification Division of the United Nations Office of Legal Affairs should be increased and that a winter session of the International Law Commission should be held in 1970 required very careful consideration in the light of, *inter alia*, very strict budgetary considerations. His delegation would therefore prefer, if such a course appeared genuinely necessary, that the regular session should be prolonged somewhat.

34. Mr. SINCLAIR (United Kingdom) said that the consideration of the report of the International Law Commission gave his delegation an opportunity to pay a tribute to the unique contribution which that body had made, in a period of twenty years, to the work of codifying international law. In that connexion, the submission of a final set of draft articles on the law of treaties had been the outstanding achievement attributable to the Commission in recent years. His Government hoped that, at the second session of the United Nations Conference on the Law of Treaties, the Conference would succeed in finding satisfactory solutions to the decisive problems which still remained, since the fate of that major effort of progressive development and codification would depend upon whether the resulting convention would be generally acceptable to all States.

35. Since the late distribution of the Commission's report had made it impossible for his delegation, like many others, to study the document in depth, it would have to confine itself to a few specific points. It noted with interest the progress already made, as a result of the careful work of the Special Rapporteur, in connexion with the topic "Relations between States and international organizations". His Government would submit written comments on the first twenty-one draft articles on representatives of States to international organizations, after it had given them careful consideration. He noted in that connexion that the United Kingdom was participating in the study—mentioned in paragraph 111 of the report—undertaken by the Council of Europe on the more general problem of the privileges and immunities of international organizations. His delegation was convinced that that study would be very useful to the International Law Commission in its further work. The particular topic of representatives of States to international organizations of universal character—the subject of the twenty-one articles—was a single constituent part of the larger complex of relations between States and international organizations includ-

ing, incidentally, the question of treaties concluded between States and international organizations or between two or more international organizations, a question which the Vienna Conference on the Law of Treaties would, in all likelihood, recommend for consideration by the International Law Commission. His delegation was glad to note that the Commission, when considering its long-term programme of work, had already contemplated dealing with the matter.

36. The succession of States and Governments had given rise to an interesting debate in the International Law Commission, which had rightly decided to subdivide the topic into two parts: succession in respect of treaties, and succession in respect of matters other than treaties. In the case of the former, it was obvious that the law of treaties and the law of State succession tended to merge, and overlap. But, if a starting point had to be found, it was the view of his delegation that an approach from the point of view of the law of treaties offered the best chance of achieving concrete results. The Special Rapporteur on succession in respect of treaties would undoubtedly find the basic material for his work in the extensive body of State practice.

37. As for succession in respect of matters other than treaties, his delegation had read with close interest the summary of the debate on that issue in the Commission's report. There was considerable danger in too rigid a classification of the various categories of succession, such as dismemberment, merger and decolonization. Problems of State succession could arise in an infinite variety of circumstances. In one and the same process of decolonization, various forms of dismemberment or merger might be involved at different stages. Furthermore, problems connected with State succession might arise even after decolonization, when an independent State could decide voluntarily to merge with another or to split voluntarily into two or more independent States.

38. His delegation recognized, of course, that questions connected with the law of succession frequently arose as a result of decolonization. The fact was, however, that the law relating to State succession had always reflected the problems which arose in connexion with the emergence of new States. Furthermore, problems connected with State succession arose not just between a newly independent State and the former administering Power, but also between the newly independent State and all other States members of the international community. Even between two newly independent States, problems might arise. One newly independent State, for example, might claim as against another certain rights obtained by succession while the other might deny that there had been any devolution of rights and obligations from the former administering Power. It was necessary, therefore, to stress that the question should not simply be viewed in the context of relations between newly independent States and the administering Powers.

39. The International Law Commission had concluded that it would be premature to consider the problem of settling disputes in relation to State succession until more progress had been made in studying the substance of the topic. His delegation would not dispute that conclusion, but would like to stress the crucial importance of providing adequate machinery for the

settlement of disputes; it accordingly hoped that the International Law Commission would later revert to that aspect of the topic.

40. Although the work of the International Law Commission on the most-favoured-nation clause was at a very early stage, his delegation was happy to note that that topic was being considered on a broad basis.

41. With regard to various administrative recommendations that the International Law Commission had made, it was not clearly indicated in the report whether the Commission proposed that the terms of office of its existing members should be extended or whether the proposed extension referred only to future members. While the arguments advanced carried weight, it must be realized that problems might arise from the point of view of ensuring a sufficient measure of rotation in membership. His Government would carefully study the implications of that recommendation and would take into account the views expressed by the members of the Sixth Committee. His delegation had also noted the concern expressed by the International Law Commission in the matter of honoraria and per diem allowances for its Special Rapporteurs. That matter should be considered within the framework of the general review which, as he understood, was currently being carried out by the Secretary-General in co-operation with the Advisory Committee on Administrative and Budgetary Questions as far as per diem allowances were concerned, and by the Secretary-General in the matter of honoraria. It would accordingly be for the Advisory Committee and the Fifth Committee to take the views expressed by the International Law Commission into account in the context of those reviews.

42. His delegation was happy to note that the International Law Commission had decided to ask the Secretary-General to prepare a new survey of the whole field of international law on the lines of the one which had previously been prepared. It was

right that the Commission should be giving attention to its long-term programme of work while bearing in mind the current needs of the international community.

Organization of the work of the Committee

43. The CHAIRMAN recalled that, upon completion of the item under consideration, the Sixth Committee's next task would be to prepare, on the basis of the draft articles drawn up by the International Law Commission, a draft convention, intended for adoption by the General Assembly, codifying the law governing special missions. In order that that task, which it was assuming for the first time, might be undertaken under the best possible conditions, the Committee should, so far as possible, adopt the methods of proven value which had been used in the plenary commissions of the conferences on codification, especially in relation to the deposit of amendments. He therefore urged delegations to transmit their proposals to the Secretariat as soon as possible in order to expedite their translation and circulation and thus facilitate the proceedings, it being understood that the right to submit other proposals later or to withdraw those already submitted would in no way be limited. All the participants would thus be able to study the proposed amendments at their leisure and to identify the most controversial points before beginning work so that the principal effort of negotiation might be brought to bear on them.

44. Mr. ALCÍVAR (Ecuador) suggested that the Commission should, without delay, set up a drafting committee to prepare the text of the draft convention on special missions, with due regard for the need to ensure an adequate representation of the different working languages within such a committee.

45. The CHAIRMAN said that he would begin consultations to that end.

The meeting rose at 12.25 p.m.

