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Report of the International Law Commission
on the work of its twentieth session
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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. KHASHBAT (Mongolia) said that, owing to the development of international relations, the number of questions relating to the organization of relations between States and international organizations was continually increasing. The prime question concerned the legal status of representatives of States to international organizations, and particularly the status of permanent representatives. In that connexion, the preparatory work of the International Law Commission, which had resulted in twenty-one draft articles, was extremely important. His delegation reserved the right to submit detailed comments on the draft articles later, but for the moment it wished to state that it attached great importance to the uniform regulation of the legal status of representatives of States. The difficulties that existed in that field were still far from being overcome, in spite of the existence of a set of rules such as those concerning the privileges and immunities of the United Nations; there had been no definite solution of the question of the rights and obligations of officials of missions on the question of their privileges and immunities. Generally speaking, the situation was still very nebulous and confused, and that frequently allowed the host State to abuse its position. It should be noted in that connexion that the United Nations Headquarters Agreement contained a provision which conflicted with the Charter of the United Nations, in the sense that it enabled the host State to restrict the privileges of representatives of States which it did not recognize.

2. Although the question of the recognition of States and Governments had been on the agenda of the International Law Commission since 1949, nothing had yet been done in that field. It was to be hoped that, after considering the questions to which the highest priority had been given, the Commission would set about studying the problem and would be able to prepare a set of rules, which might take the form of a convention.

3. As for the question of the succession of States and Governments, his delegation noted with satisfaction the progress achieved in a field which had become particularly complex and difficult with the recent appearance on the international scene of many new States as a result of decolonization, and it endorsed the decision to divide the subject and entrust it to two Special Rapporteurs.

4. On the question of the most-favoured-nation clause, his delegation recognized that it played a fundamental role in international trade. It was in general agreement with the decision taken by the Commission to ask the Special Rapporteur, Mr. Ustor, to concentrate on the legal nature of the clause and the legal conditions governing its application.

5. In conclusion, being aware of the seriousness of the problems raised by an extension of the mandate of the members of the Commission and the organization of a winter session, he considered that there should be sober reflection before a decision was taken on the matter, in view of the important financial implications which the adoption of the Commission's proposals would undoubtedly have.

6. Mr. KLAFKOWSKI (Poland) noted that 1968 marked the twentieth anniversary of the International Law Commission, whose task was to promote the progressive development and codification of international law. Its achievements in that respect had been substantial: on the basis of the drafts which it had prepared, numerous multilateral treaties had been concluded. Of particular note were the four Geneva Conventions of 1949 (the so-called Red Cross Conventions), the four Geneva Conventions of 1958 on the law of the sea, the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations. They represented certain aspects of the work carried out by the Commission *de lege lata*, but there were many other aspects which came under the heading of *lex ferenda*.

7. With regard to the report drawn up by the Commission on the work of its twentieth session, his delegation wished to comment on the following three points: relations between States and international organizations, the succession of States and Governments, and the increasing importance of the codification of international law.

8. With regard to the first point, it should be noted that diplomatic law governing relations between States and international organizations had two aspects, in the sense that it regulated the legal status, privileges and immunities not just of the Organization, its officials and experts, but also of the representatives of States to organizations, their organs

and international conferences convened by them. Such regulations had been provided for in the 1946 Convention on the Privileges and Immunities of the United Nations and in the 1947 Convention on the Privileges and Immunities of the Specialized Agencies.

9. The interpretation of those Conventions and the practice which had emerged in the course of the last two decades allowed the following conclusions to be drawn. First, the universal international organizations which had been set up after the conclusion of the Conventions did not benefit from their provisions. Secondly, since 1947 the United Nations and the specialized agencies had organized a network of offices away from their headquarters in almost all areas of the world. By 1959, 250 offices of that kind had been set up in 83 cities. Of those, only 39 had been created by the Organization, all the others having been set up by the specialized agencies. Finally, there had been a marked increase in the number of subsidiary organs in all organizations, and, consequently, in the number of meetings and conferences and of international officials.

10. For all those reasons, the 1946 and 1947 Conventions could hardly be regarded today as being perfectly suited to the conditions of contemporary international practice. International organizations did not enjoy sufficient safeguards to ensure that they could function freely and independently and, when their headquarters was in a country which had not ratified those Conventions, their legal position was greatly affected, in spite of the existence of special bilateral agreements. It was therefore essential to undertake a codification of the question, which was of great importance for all States belonging to the international community.

11. Regarding the legal status of permanent missions to international organizations, his delegation considered that the legal status of representatives of States to international organizations differed in principle from that of the representatives of States accredited to other States. The international organization was not an international subject in the same way as the State: its legal status might be greater or lesser, according to the will of the States comprising it. The nature of the relations it maintained with States excluded any idea of "reciprocal recognition", with all its legal consequences. It followed that the privileges and immunities of representatives of States to international organizations differed from those of representatives accredited to other States. Finally, the problem of diplomatic relations between a State and an international organization was complicated by the existence of a third subject of international law, the host State, which guaranteed the privileges of the organization and of the representatives of States accredited to it, even when the latter belonged to States with which the host State did not maintain diplomatic relations. Codification of that branch of law was thus equally necessary.

12. With regard to the second point, the succession of States and Governments, his delegation endorsed the division of the question into two parts and expected that the specific problems raised by the process of decolonization would be given priority.

13. Finally, on the third point, he stressed that positive international law was always in a process of progressive development and that the course of its development was determined by international practice as evolved by States and international organizations. At the present time, international law had its origins principally in international treaties which defined legal relations between States and international organizations and regulated numerous problems whose complexity was due to the emergence of many new States. Its codification was therefore a very important contribution towards stabilizing the international juridical order.

14. Mr. DABIRI (Iran) expressed his great satisfaction at the remarkable work accomplished by the members of the International Law Commission, which had prepared, *inter alia*, the draft articles on the law of treaties, a large number of articles on special missions and the draft articles on representatives of States to international organizations.

15. With regard to the latter text, the Iranian delegation thought that the proposed wording of article 2, on the scope of the draft articles, was appropriate. In that connexion, the International Law Commission, while seeking to limit the scope of the draft articles, must be given credit for having adopted a flexible position by proposing the intermediary solution which was contained in paragraph 2 of the article. The wording of article 4, concerning the relationship between the draft articles and other existing international agreements, that of article 5, concerning derogation from the articles, and that of article 7, which dealt with the functions of a permanent mission, also met with the approval of the Iranian delegation.

16. As for the question of the succession of States and Governments, he was of the opinion that, in view of its complexity, it must be studied thoroughly both by the International Law Commission and by the Sixth Committee before a final text could be prepared on the subject.

17. The Iranian delegation also attached great importance to the question of the most-favoured-nation clause and it was convinced that as a result of the efforts of Mr. Ustor, the Special Rapporteur, it would shortly appear on the agenda of the Sixth Committee.

18. In conclusion, he said that, as far as the recommendations and conclusions of the International Law Commission were concerned, the Iranian delegation supported the decisions relating to the organization of future work and the methods to be adopted in the future, but it had not yet decided its position with regard to the problems raised by the extension of the term of office of the members of the Commission and the holding of a winter session in 1970. It thought, however, that any decision on those questions should be preceded by thorough study and it would support any recommendation designed to contribute to the efficiency of the work of the Commission, in accordance with the wish expressed by the General Assembly in its resolution 174 (II) of 21 November 1947.

19. Mr. OMBERE (Kenya) associated himself with the congratulations extended by previous speakers to the International Law Commission on its valuable

work and paid a special tribute to its Chairman, Mr. Ruda.

20. Although the Kenyan delegation agreed with the substance of the principles stated in the draft articles on representatives of States to international organizations, it nevertheless wished to make certain comments on two particular points.

21. First, the provisions of article 17, paragraph 3, which required the organization to transmit to the host State the notifications referred to in paragraphs 1 and 2 of the article, could, in the opinion of the Kenyan delegation, give rise to abuses.

22. Secondly, with regard to precedence among permanent representatives which, according to article 19, "shall be determined by the alphabetical order or according to the time and date of the submission of their credentials to the competent organ of the organization, in accordance with the practice established in the organization", it was the time and date of the submission of credentials and not the alphabetical order which should determine precedence.

23. Turning next to the question of the succession of States and Governments, he thought that, since decolonization was the most important phenomenon which had occurred in recent years, full approval should be given to the position of the Commission, which had decided that the problem of newly independent States should be given special attention.

24. Lastly, with regard to the question of extending the term of office of the members of the Commission from five to six or seven years, he pointed out that the election of the members of the Commission was governed by article 10 of its Statute, which provided that "the members of the Commission shall be elected for five years. They shall be eligible for re-election". In those circumstances, the General Assembly had no power to extend their term of office. To decide otherwise would not only be contrary to the provisions cited, but also to those of article 8 of the Statute, which provided that at the election, the electors should bear in mind that "in the Commission as a whole representation of the main forms of civilization and of the principal legal systems of the world should be assured". The membership of the Commission, however, had been established in 1955, and, later, in 1956 and 1961, and as most of the developing countries had at that time still been under colonial domination, they could not be elected as members of the Commission. The Kenyan delegation therefore expressed the wish that the election of the members of the Commission should be carried out in accordance with the provisions of article 10 of its Statute and not in accordance with other procedures.

25. Mr. SONAVANE (India) expressed the particular satisfaction felt by his delegation when it considered the many positive contributions made by the International Law Commission to the cause of law during the previous twenty years. The Indian delegation was grateful to the Chairman of the Commission for the clarifications of the report which he had provided. Welcoming the valuable liaison established between the Sixth Committee and the International Court of Justice by the presence of representatives of the latter at the current session, his delegation

wished to emphasize that it was important for the natural link between the Court and the International Law Commission to be maintained.

26. The Indian Government would certainly study the twenty-one draft articles on representatives of States to international organizations, proposed by the Commission with a view to completing the codification of diplomatic law which had been begun by the Vienna Conventions, and would comment on them at a later stage. In any event, the Indian delegation would be prepared even now to support the position adopted by the Commission in articles 2 to 5. It was wise of the Commission to have limited the scope of the text to representatives of States to international organizations of universal character, although without prejudice to the possible application of the same basic norms to other organizations such as regional organizations, and to the right of States to extend the application of the articles themselves to their representatives to other organizations, by agreement.

27. The reservations which had been introduced in articles 3, 4 and 5 were also wise and that in article 5, in particular, was in accordance with the general principles recognized by the Commission, especially with regard to special missions. Articles relating to representatives of States to international organizations could only state general norms and could not take away from States the freedom to agree to specific rules applicable to their representatives to an organization.

28. Turning to the question of the succession of States and Governments, he observed that the decision to consider it under two sub-headings was perfectly justified, but that there was a certain interrelationship between the two and that consequently the two Special Rapporteurs should perhaps consult each other at a later stage of their work. Moreover, it was very important that, on that question, the techniques of codification and progressive development of law should be combined, as the Commission had decided, in order to harmonize the old and traditional rules with contemporary conditions. It would be premature to try to indicate what form the result of the work would take and to estimate whether there should be any classification of rules according to the different situations in which succession occurred. There was no doubt, however, that a study of the question should pay special attention to the problems arising for States emerging as a result of decolonization, since such problems had specific features which distinguished them from other cases of succession and the Indian delegation welcomed the Commission's decision to take them into consideration. With regard to the basic question of whether the study of succession in respect of treaties should come under the law of treaties or under the more general rules relating to succession in international law, his delegation noted that the Commission had merely noted that the Special Rapporteur's draft would be in the form of an autonomous group of articles.

29. Of the many different aspects under which the most-favoured-nation clause should be studied, he mentioned in particular that which concerned, from the historical point of view, the smaller and newly independent States. Moreover, the International

Law Commission might usefully take the advice of the United Nations Commission on International Trade Law on the role of that clause in the field of international trade.

30. With regard to the outcome of conventions drawn up following the work of the International Law Commission, mentioned in paragraph 102 of the report, he pointed out that the United Nations Institute for Training and Research had undertaken a study of that question^{1/} and he suggested that the Commission should await the result before undertaking a study of its own.

31. With regard to the organization of the Commission, his delegation had no doubt that an extension of the term of office of its members should ensure continuity and better planning and execution. The questions under consideration by the Commission required long and thorough study and involved consultation at various stages with Governments and international organizations. His delegation did not think that the principle of rotation for members of the Commission would be seriously affected if the term of office of its members were slightly extended. It was therefore prepared to support a recommendation to extend the tenure of office to six years. It was also in favour of a special additional allowance for the Special Rapporteurs to help them defray study and incidental expenses in connexion with their work, and the recommendation for increasing the staff of the Codification Division. The Sixth Committee should support those recommendations, the financial implications of which would no doubt be considered by the administrative and budgetary organs of the General Assembly. His delegation was also in favour of holding a winter session in 1970, in accordance with the recommendation made in paragraph 103 of the Commission's report.

32. In conclusion, his delegation expressed its satisfaction at the success of the Seminar on International Law at Geneva, which seemed to have become a regular institution.

33. Mr. MOLINA LANDAETA (Venezuela) said that any doubts his delegation might have had about the report of the International Law Commission, in view of the short time available for its consideration, had been dispelled by the detailed statement made by the Chairman of the International Law Commission (1029th meeting). His Government would in due course submit observations on the draft articles on representatives of States to international organizations, which seemed in general to be well-balanced and objective and to take into account the relevant international instruments.

34. With regard to the succession of States and Governments, his delegation had noted in particular in paragraph 40 of the report, that the Commission would leave aside for the time being the question of succession in respect of membership of international organizations, as it was related to succession in respect of treaties on the one hand and to relations between States and intergovernmental organizations

on the other; he noted that there was no indication of what prominence would be given in the draft articles on relations between States and international organizations to problems relating to the law of succession, in spite of the fact that those problems deserved close attention. Moreover, although it was only right that a study of State succession should be concerned mainly with the problems of decolonization, it must be remembered that all States were interested in that branch of law, which covered many questions, including that of frontier treaties.

35. The work undertaken on the most-favoured-nation clause seemed very promising.

36. With regard to questions of organization, his delegation would express its opinion on the Commission's recommendations at a later stage, but it wished to stress the need to ensure the best possible conditions for the Commission's future work. On that same subject, his delegation was pleased to note that the question of State responsibility, to which it attached great importance, was to be the object of a study conducted by Mr. Ago. In that study, it would be useful to make provision for all cases in which acts might be imputed to a State or its agents. Venezuela, for its part, had examined various cases involving State responsibility arising from the activity of its administrative and judicial organs, but had found little that was specific in a mass of facts and arguments. His delegation therefore hoped that the Special Rapporteur would prepare a practical report on the subject, as proposed.

37. He welcomed the contribution made once again by the Seminar on International Law to a better understanding and a wider dissemination of international law, to which Venezuela attached great importance.

38. He hoped that, in its future work, the International Law Commission would continue to adopt a scientific approach to its work, taking as a starting point the consideration of the practical applications of international law in the international community, as the representatives of Romania and Czechoslovakia had suggested.

39. In concluding its remarks, which would determine its vote on the draft resolutions which might be submitted to the Sixth Committee, his delegation commended the very clear and useful Secretariat working paper annexed to the Commission's report.

40. Mr. MUTUALE (Democratic Republic of the Congo) observed that in its set of draft articles on representatives of States to international organizations the International Law Commission had dealt with only one of the two aspects of diplomatic relations between international organizations and States, namely the status of representatives of States to international organizations, and had deferred a study of the status of representatives of international organizations to States; in his view, that approach was justified on both practical and substantive grounds.

41. He intended to make observations of a preliminary nature only on the key articles of the draft, namely articles 2, 3, 4 and 5, bearing in mind the need to unify the pertinent rules and to harmonize the interests

^{1/} See Official Records of the General Assembly, Twenty-second Session, Annexes, agenda item 45, document A/6875, annex I, paras. 59-69

of receiving States, the international organization concerned and sending States. Turning first to article 2, he was pleased to note that the Commission had included one reservation which, as his delegation understood it, would protect the authority of other sources of diplomatic law with regard to the application of the future convention to representatives of States to international organizations of a regional character. Moreover, it was clear from paragraph 2 of that article that a member State of such an international organization could not claim immunity from a rule of international common law which might be invoked against him by claiming that such rules had been laid down in an agreement relating only to international organizations of a universal character. Thus worded, article 2 was both a consolidation and development of diplomatic law; nevertheless, the wording of paragraph 2 of that article might well be simplified.

42. His delegation had no serious objections of substance to the wording of article 3, which took due account of the diversity of international organizations. On the other hand, the reservation made in article 4 seemed no different from that made in article 3; his delegation therefore questioned the need to have a separate article for other international agreements between States and international organizations, although it did think that international agreements in force between States might be included in a separate article; in short, his delegation would prefer a more appropriate regrouping of the principles in articles 3 and 4.

43. Finally, his delegation approved article 5 of the draft, since it thought that no provision of the future convention should hamper the subsequent development of diplomatic law. That was a principle of such major importance that it should be made categorical.

44. Turning to the question of the succession of States and Governments, his delegation hoped that the Commission would achieve tangible results in that field, which was of interest to the international community as a whole and to newly independent countries in particular. He was therefore pleased to note that the Commission had decided to focus attention on the problems of new States. It would be wrong to think that the attitude adopted by the Commission was incompatible with that of delegations which thought that the Commission should instead concentrate on formulating general rules which made no distinction between succession resulting from decolonization and classical succession, for it should be possible to formulate general rules which were applicable to succession, based on the experience gained from the decolonization process. Priority should be given in the study on succession to the economic and financial aspects of the question: if technically it could be said that decolonization was a passing phenomenon, the same was not true in the economic and financial field, where the transfer of sovereignty raised lasting problems.

45. He emphasized the importance which his delegation attached to the study on the most-favoured-nation clause. In that study, the Commission should above all aim at maintaining a balance between the interests of States.

46. In conclusion, he thanked all those States which had granted scholarships to the participants in the Seminar on International Law at Geneva, and emphasized that his delegation supported the measures designed to help the members of the International Law Commission financially in the performance of their task.

47. Mr. JACOVIDES (Cyprus) thought that during its twentieth session the International Law Commission had made a substantial contribution to the codification and progressive development of international law. As his country was not represented in the Commission, he thought it extremely appropriate that the Sixth Committee should serve as a sounding board for the work of the International Law Commission and at the same time act as a stimulus to the Commission's efforts.

48. His delegation welcomed the set of twenty-one draft articles on representatives of States to international organizations, which seemed to have achieved a proper balance between the legitimate interests of the three parties concerned, namely, the sending State, the receiving State and the organization concerned. He hoped that the Commission would soon be able to complete the remainder of the draft articles.

49. With regard to the question of the succession of States and Governments, he noted that, as the representative of a newly-independent State, he had in the past had the opportunity to stress the importance he attached to that aspect of international law. His delegation thought that in view of the developments of the last twenty years, particular attention should be given to the legal complexities arising from decolonization.

50. With regard to the most-favoured-nation clause, his delegation welcomed the Commission's decision to focus its attention on the legal nature of the clause and the legal conditions governing its application.

51. He thought that the proposal to extend the term of office of the members of the Commission from five to six or seven years deserved close consideration. It was essential to ensure the maximum efficiency in the Commission's work without prejudicing the natural right of all States to participate in the Commission in an equitable manner. A concern for efficiency should also be the determining factor in the examination of the proposal for the increase in emoluments payable to the members of the Commission, and particularly the Special Rapporteurs. With regard to the need to increase the staff of the Codification Division of the Office of Legal Affairs, it was evident that the need existed and that the necessary measures must be taken to meet it.

52. Finally, his delegation noted and welcomed the sound relationship existing between the Commission and the International Court of Justice, and the Commission's co-operation with such bodies as the Asian-African Legal Consultative Committee, the European Committee on Legal Co-operation and the Inter-American Juridical Committee, and it was gratified at the success of the Seminar on International Law at Geneva.

53. Mr. NALL (Israel) said he first wished to make some observations on the draft articles on representatives of States to international organizations. It seemed to him that article 14 belonged more appropriately to the general law of treaties and should, therefore, be brought within the scope of the United Nations Conference on the Law of Treaties. Its retention in the draft should be considered only if the Conference, after its 1969 session, did not deal with the matter; otherwise, he found the substance of the article satisfactory.

54. Secondly, article 17 should be extended by the addition of a provision requiring notice to be given to the organization of temporary departures of members of permanent missions. It was the normal practice for notice of such temporary absence by heads of diplomatic missions to be given to the host State. His delegation therefore believed that a similar requirement for notice of temporary absence should be introduced with reference to members of permanent missions who were frequently required to attend meetings and conferences in countries other than the host State, and who were called home by their Governments for consultations. It seemed, too, that consideration should be given to the possibility that, where an international organization had more than one seat or office, the host countries should, at least as a matter of courtesy, grant recognition to the status of members of permanent missions when they were on temporary duty at the seat or office of the organization in their territory; although certain countries did follow that practice, it could usefully be developed. The Commission could consider it and perhaps find a suitable form in which to frame that suggestion. He pointed out that, when he referred to recognition, he was thinking not of any formal diplomatic privileges and immunities such as were granted by a host State to the members of permanent missions situated in its territory, but rather of various administrative courtesies which enabled members of permanent missions better to discharge their duties in countries other than the one in which their mission was established.

55. Finally, it was perhaps desirable to complete article 20 by the addition of a provision similar to those contained in the Vienna Conventions on Diplomatic and Consular Relations to the effect that host States should help sending States to acquire on their territory premises necessary for their permanent missions or assist them in renting suitable accommodation, and, when necessary, assist permanent missions in obtaining suitable accommodation for their members.

56. Turning to the question of succession of States and Governments, he merely wished to express the hope that, when the United Nations Conference on the Law of Treaties had completed its deliberations, the Commission would be in a position to make rapid progress on the topic of succession in respect of treaties; his delegation viewed with approval the views expressed in paragraphs 88 and 89 of the report on the nature and form of its work in that field.

57. With regard to the most-favoured-nation clause, his delegation welcomed the Commission's request to the Special Rapporteur not to confine his studies

to the fundamental importance of the role of the clause in the domain of international trade but to explore the major fields of its application; in that connexion, he drew attention to his delegation's statement on that question at the 960th meeting of the Sixth Committee.

58. Turning to chapter V of the report and the annex, he said his delegation supported the recommendation of the Commission that an additional special allowance should be made available to the Special Rapporteurs in order to help them defray travel and incidental expenses in connexion with their work, since it believed that it was essential that those expenses should be borne by the Organization; he did not consider that the special allowance referred to in paragraph 24 of the annex could cover incidental expenses of that nature. He would be grateful if the representative of the Secretary-General could give some estimate of what might be an appropriate additional special allowance.

59. With regard to the Commission's recommendation to increase the staff of the Codification Division of the Office of Legal Affairs, it was well known that, although a tremendous burden was carried by that Division, it produced work of a high quality. It was therefore to be hoped that the organs responsible for budgetary and administrative matters would not oppose any measures that might be proposed for an increase in the staff of the Division.

60. His delegation welcomed the Commission's initiative in deciding to ask the Secretary-General to take a new look at the 1948 Survey of International Law in relation to the Work of Codification of the International Law Commission,^{2/} in order to draw up a list of long-term topics that were ripe for consideration. It agreed with the Commission's programme and organization of future work and, in particular, its proposal to hold a winter session in 1970 for the purposes mentioned in paragraph 103 of the report. It was, however, to be hoped that the additional session would be held at the least possible expense to the United Nations.

61. His delegation viewed with interest the work undertaken by Mr. Ago and expressed the hope that the General Assembly would soon be informed of its conclusions. It welcomed the strengthening of links between the Commission and the International Court of Justice, as well as the closer co-operation established between the Commission and the Asian-African Legal Consultative Committee, the European Committee on Legal Co-operation, and the Inter-American Juridical Committee.

62. In conclusion, he stated that his delegation associated itself with the support expressed by earlier speakers for the Seminar on International Law, and he was happy to announce that his Government was prepared to make a scholarship available for the year 1969 in the sum of \$1,000 for the benefit of participants from the developing countries and on the conditions expressed by his delegation at the 840th and 960th meetings of the Committee.

^{2/} United Nations publication, Sales No.: 48.V.1(I).