THE DIPLOMATIC ACTIVITIES OF INTERNATIONAL ORGANISATIONS : THE UNITED NATIONS AND THE EUROPEAN COMMUNITIES CONTRASTED

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I. INTRODUCTION

On 19 November 1960 the European Parliamentary Assembly adopted a resolution declaring that, in its view, « les Communautés européennes jouissent, de par leur personnalité juridique internationale, du droit de légation actif et passif » [1]. This determination was made on the basis of a report submitted by the *Commission des affaires politiques et des questions institutionnelles* (rapporteur, M. M. van der Goes van Natters) in which it was argued that the « right of legation » could be extended to the Communities because they, like States, are legal subjects which possess « la capacité de mener une politique indépendante » [2]. In this sense, it was said, the legal status of the European Communities was to be distinguished from that of other international organizations, such as the United Nations.

As is well known, the Council of Ministers has not taken action following the adoption of the Assembly's resolution in order to implement its own decision of principle, taken on 1 February 1960, to establish Community missions in third States, nor has it proved possible to accredit permanent

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[1] Resolution adopted on 19 November 1960, *J.O.*, p. 1496/60.

[2] *Assemblée parlementaire européenne*, doc. 87/1959, par. 8.
(See also the complementary report, doc. 88/1960-1961).

missions to London and Washington, as recommended by the Parliamentary Assembly.

As regards the more general aspects of the « right of legation », it may be noted that the Vienna Convention on Diplomatic Relations which was concluded in 1961 makes no mention of the right, even as between States, and an attempt to incorporate it in the text failed of adoption at the Vienna Conference itself. It may be recalled too, that during the opening period of the League of Nations a similar argument [3] was presented that the new body was to be assimilated to a State and on this basis accorded the *ius legationis,* although it is doubtful if anyone would argue in this fashion nowadays. These considerations, together with the fact that the United Nations has developed an increasing practice of dispatching official representatives for purposes which are more easily to be fitted into a diplomatic category than any other, suggest that the question of the diplomatic activities of international organizations is one which needs to be reviewed against a wider background than has so far been the case. The remarks which I have to make on this occasion are intended as a modest contribution to such a review, and are put forward as aids to debate, to be rejected or qualified in the light of further discussion and development, rather than as a restatement of settled conclusions in the matter.

II. MEANING OF « DIPLOMATIC ACTIVITIES » AND « INTERNATIONAL PERSONALITY »

Before examining the specific experience of the United Nations and the European Communities in this sphere, I should like to consider the two broad problems which are presented from the standpoint of general theory. These two issues, which are closely connected, are, firstly, the question of what we understand by the concept of « diplomatic activities » on the part of States — which constitute after all the principal subjects of international law — and, secondly, the content of the international personality of States and of international organizations respectively in this connexion. To take the first issue, it may be instructive to note here how narrowly the modern works from which we derive our ideas approach these matters, by comparison with the earlier period when similar problems were encountered during the evolution of the modern state system. If one looks at the treatises produced by the « fathers of international law » — Victoria, Grotius, Pufendorf, Vattel and so forth, let alone such seminal figures as Machiavelli and Hobbes — one finds a large amount of material which deals with the conduct of foreign policy; these works are manuals of statecraft as well as the ancestors of our

[3] SCHÜCKING and WEHBERG, *Die Satzung des Völkerbundes kommentiert* (2nd edition), pp. 115-116.

present textbooks. Modern books on international law, by contrast, say remarkably little on such themes, parly because the whole subject has become more « scientific », with a concentration on the empirical « facts » of state practice, and partly because of the division which has arisen, at least for methodological purposes, between international law and international relations (although it may be pointed out in passing that this division has never dominated the thinking of those whose lives have been spent in the daily practice of international law). As a result the State, as conceived by the international lawyer, has become an inert, skeletal creation, an abstraction from the total reality, somewhat akin to the economic man posited by the economist. The reasons why a State acts as it does, the question of what it may or may not do, and the major issue of who is to exercise control over its relations with other actors on the international stage, have, over the years, been parcelled out under various headings — public law, constitutional law, jurisprudence, international law, international relations, and the study of political theory, to name the main categories. In the case of the principal international organizations, these issues have, however, once more presented themselves, though against a very different background, and require for their answer a looser, more imaginative, les *a priori* approach, than a simple assessment « This organization is like a State, that one isn't » — although I would not wish to go to the other extreme of suggesting that the paradigm case of the diplomatic activities of a State is of no relevance whatsoever.

It is, however, I suggest, a fact that at the present time a Foreign Minister might read one of the standard works on international law and learn very little about the nature and scope of the powers available to him, and even less about how he should conduct his foreign policy, although he would certainly be given a careful account of the formal status of envoys and of the privileges and immunities they and their missions are to be given. Nevertheless even these accounts rest on certain assumptions regarding the nature of the political universe, and it is these which must be brought to light (although at the level of generality at which I must state them they are familiar enough) before going on to examine the position of international organizations.

Diplomatic relations between States have, in the first place, never comprised all the contacts which may occur between two States and their respective inhabitants; not only have warlike acts been excluded, thus confining the medium of diplomacy primarily to negotiation and the collection of information, but so have the innumerable encounters and exchanges which may take place between individual citizens and business concerns of the two countries; the major requirement has been that the contacts should have an official, representational quality. To put the matter another way, under the national state system to which we have been acustomed, people live in distinct communities of a size and nature such that they do not readily identify their

interests with those of other people living in communities elsewhere. Since, however, these communities find it in their interest to have contact with one another, in their overall capacity as independant entities, and since whole communities cannot themselves meet, it is necessary as Gentilis said, « that others should be appointed who would be able to transact the necessary business »[4].

The essential, irreductible elements of the conduct of diplomacy consist, therefore, of clearly felt and recognized differences between the independent entities we call States, and the fact that the relations concerned are conducted by persons acting on behalf of the whole. The persons involved may be classified into three broad groups : the leading figures exercising political authority, normally the head of State, the head of Government and the Foreign Minister, together with those associated with the process of government (for example, a Parliamentary assembly); the ambassadors and others sent abroad in connexion with the bilateral exchange of embassies; and, lastly, the all too often neglected case of the dispatch of a special mission.

Each of these three major « prototypes » (or archetypes) is different from the other and each has a contribution to make in answering the question of the extent to which the activities of international organization may be regarded as « diplomatic ». As regards the first group the political figures mentioned may, within the bounds of the constitution, commit the State to a range of obligations or negotiate any agreement which seems to them advantageous, subject only to the indeterminate limits of the principles of *ius cogens* and, more substantially, to the political reaction of the community. The second group, whose example has been the most pervasive of the three, act under instruction but possess, at least as regards the State to which they are accredited, a general right of representation, namely a right to represent the State in all aspects of its foreign relations (the *ius repraesentationis omnimodo*). Special missions, on the other hand, though equally official, are entitled only to perform specific tasks, as agreed upon between the two States, and do not have a broad authority in all spheres.

The choice of which, or which combination, of these three main groups of agents will be used on any given occasion rests with the sending State, provided the receiving State agrees to receive an envoy if one is dispatched. Similarly the control over the person sent, the limitations on his authority and the provision of his instructions, will be determined by the dispatching State.

Turning from this rudimentary description to the other principal issue, the legal personality of the subjects of international law, it is accepted doctrine that all sovereign independent States may engage in diplomacy in the sense of sending and receiving envoys, provided the other States involved agree

[4] *De Legationibus, Libri Tres* (1590), bk. I, chapter XX, Classics of International Law, 1924, vol. II, p. 51.

to receive or to send the particular persons selected. By dint of being a State, each State is deemed to have those capacities or facilities which other States have (including the capacity to send and receive representatives), whether or not a particular State chooses to exercise all the legal powers ascribed to it, without any express grant of those powers; constitutions are national, not international documents. In the case of international organizations, the position is the reverse : the extent of their powers, and whether they shall have any powers at all, is a matter which is governed by the constituent international instrument, as interpreted in the practice of the organization concerned. Moreover while it is possible to argue that, despite their material differences, States enjoy legal equality in their attributes, the same reasoning can hardly be applied in respect of international organizations, no two of which have the same constitution, nor usually even the same membership.

At this point it is necessary te distinguish between the position of the United Nations and that of the European Communities. The United Nations, a body of universal vocation, is not seriously restricted by the problem of the recognition, or non-recognition, of its legal status by third States; the objective nature of its personality, as regards both member and non-member States, is now unquestioned. The European Communities, on the other hand, cannot seek to base their claims to objective personality on the extent of their membership, but must rely instead on the depth of their penetration, on the scope of their ambition to achieve a unification *vis-à-vis* the exterior of certain important functions normally exercised by States. The question — does the legal status of the United Nations and of the European Communities suffice to enable them to dispatch representatives, as a matter of legal capacity, similar to the dispatch of diplomatic representatives by States ? — may thus receive different answers according to whether one choses to emphasise the accepted world-wide scope and manifold activities — from peace-keeping forces to relief programmes and economic assistance — of the one or the potentially federal tendencies of the other.

Even as regards the prior question which is sometimes raised, whether relations between these organizations and their members can be termed « diplomatic » or are to be excluded as being internal and self-regulated, a paradoxical, asymetrical answer is reached : for the European Communities there is less need to have « representatives » in member States because national representatives are so closely involved in the work at the centre — for the European bodies the problem of representation is external; in the case of the universal organization, just because it is universal and non-member States are the exception, it may be necessary to send representatives to member States to ensure that its objectives are advanced, and such representatives may be more acceptable precisely because, as an organization grows in size it is more easily distinguished from its particular parts. In terms of the requirements of the two Organizations therefore, as well as of the scope of their relative objectives,

it is possible to argue that the claim of the United Nations to send representatives is fully equal to, if distinct from, that of the European Communities. Before attempting, however, to give a more complete assessment of the legal position of the two bodies in this regard, it is necessary to examine more closely the actual practice in this sphere of the Organizations concerned.

III. DIPLOMATIC ACTIVITIES OF THE UNITED NATIONS AND OF THE EUROPEAN COMMUNITIES

A. THE UNITED NATIONS

As has already been indicated, it is clear that if the position is adopted that only those subjects of international law may send and receive representatives which conduct an independent external policy, any universal or quasi-universal organization is automatically excluded, as a matter of definition, except possibly as regards its relations with non-member States [5]. Since, in the specific case of the United Nations, the Organization has a personality distinct from that of its members, and is entrusted under its Charter with a range of responsibilities that may, *inter alia,* in practice, necessitate the dispatch of representatives, the imposition of the requirement that it should have a « foreign policy » appears to be out of place however, a « category error » in the philosopher's phrase.

The Organization's aim which forms the nearest parallel (if parallel it be) is the attempt to achieve the objectives and to secure the observance of the principles set out in the Charter; individual member States are, at one and the same time, obliged to give the Organization every assistance in any action it may undertake, and to accept the possibility that, in any given case, the action concerned may be directed against what they consider to be their own interests, or to be, at the least, distinct from what they themselves consider a desirable policy. Put in another way, States may sometimes be impelled in different directions, according to whether they think of themselves as constituent parts of the Organization or as something separate from it.

The major part of the machinery which exists to secure the objectives of the Organization is conference machinery of an institutionalized form. In the case of the General Assembly and the Security Council, for example, the object largely combines with the function, namely, to meet, to discuss, and to adopt resolutions, and it is hoped or assumed that this process will of itself help to secure the implementation of the results agreed upon. (*Cf.* the European

[5] Or, conceivably, extra-terrestrial bodies. *Cf.* the reference to astronauts as « envoys of mankind » in Article V of the Treaty on Principles governing the activities of States in the exploration and use of Outer Space, including the Moon and other celestial bodies.

Communities with direct regulatory powers and the role of the European Court of Justice.) Where circumstances have been such, however, that the United Nations organ has wished a particular action to be performed — over and above a matter of mere administration but not amounting to compulsory enforcement action under Chapter VII of the Charter — it has been necessary to find or create an executive agent; a United Nations representative in other words. The plenary organs may thus decide to establish subsidiary bodies which may be required to perform tasks (on behalf of the parent organ or of the organization as a whole) normally falling within the scope of a diplomatic mission — for example, to discover the facts regarding a particular situation or to help negotiate the settlement of a dispute. Such bodies, unless confined to a single person, tend to have certain operational defects. In so far as their members continue to serve as national representatives their individual actions will usually be linked with that of their respective foreign ministries; even if this should not be the case, it will be necessary to proceed in such a way that the consensus of the members is preserved. Furthermore, the fact that the representatives will rarely be the same in different committees will reduce the possibility of accumulating experience. Although such subsidiary bodies have been used therefore, or even single individuals, specially appointed for particular tasks [6], the tendency in the United Nations has been to have recourse to the office of the Secretary-General and the facilities, political and material, which that office has provided. In the Introduction to the Secretary-General's 1960-1961 *Annual Report* the matter was expressed as follows :

> « Members have to a large extent used the possibility to request the Secretary-General to perform special functions by instructing him to take the necessary executive steps for implementation of the action decided upon. This has been done under Article 98 and has represented a development in practice of the duties of the Secretary-General under Article 97. The character of the mandates has, in many cases, been such that in carrying out his functions the Secretary-General has found himself forced also to interpret the decisions in the light of the Charter, United Nations precedents and the aims and intentions expressed by the Members » [7].

Such diplomatic ventures have not necessarily rested on the adoption of a suitable General Assembly or Security Council resolution; the possibility has also existed, under the structure created by the Charter, to rely on the independent authority of the Secretary-General, as the embodiment of a principal organ of the United Nations. This authority has in turn been based on the provisions of Article 99 of the Charter, entitling the Secretary-General to bring to the attention of United Nations organs any matter which, in his view, threatens the maintenance of international peace and security. It is pre-eminently the

[6] E.g. the appointment by the Security Council of its President, Ambassador Jarring of Sweden, to hold discussions with India and Pakistan in February 1957.

[7] *Op. cit., General Assembly Official Records,* Sixteenth Session, Supplement nº 1A, A/4880/Add. 1, p. 5.

existence of this clause which has transformed the Secretary-General from a « purely administrative official to one with explicit political responsibility » and accorded him « a broad discretion to conduct inquiries and to engage in informal diplomatic activity in regard to matters which "may threaten the maintenance of international peace and security" »[8]. Whilst the provisions of the Charter do not accord to the Secretary-General the power to adopt an independent « foreign » policy (as opposed to a position of independence), successive holders of that office have maintained the interpretation of Article 99 stated in the text and it is on its basis — as well as on the totality of the position of the Secretary-General within its unique setting — that they have themselves engaged in diplomatic activities and dispatched representatives to States. The following list, which is by no means exhaustive, summarizes in very abbreviated form and in approximate chronological order some of the principal examples of these activities.

Secretary-General's discussions in Peking, 1954

Under resolution 906 (IX) of 10 December 1954 the General Assembly requested the Secretary-General, « in the name of the United Nations », to seek the release of members of the United States armed forces under the United Nations Command who had been captured by forces of the People's Republic of China and who had not been repatriated pursuant to the Korean Armistice Agreement. The Secretary-General was authorized to employ « the means most appropriate in his judgment » in securing this objective. The Secretary-General went to Peking and, despite the fact that the Chinese authorities rejected the authority of the General Assembly resolution, held discussions with the Government there, on the basis of his authority as Secretary-General, which the Government was prepared to acknowledge[9]. The military personnel in question were subsequently released.

Secretary-General's Representative in Jordan, 1958

In the course of the 1958 crisis involving Lebanon and Jordan the Secretary-General suggested that some form of United Nations representation, responsible to his office, should be established in Jordan. Jordan stated its willingness to receive a United Nations representative, to serve as the special representative of the Secretary-General, to assist in the implementation of resolution 1237

[8] « The International Civil Servant in Law and in Fact », lecture delivered by the Secretary-General at Oxford University, 30 May 1961. Printed in *The Servant of Peace, A Section of the Speeches and Statements of Dag Hammarskjöld* (ed. Foote), pp. 329-335.

[9] LASH, « Dag Hammerskjöld's Conception of his Office », 16 *International Organization*, 1962, pp. 542-548, and see also GORDENKER, *The United Nations Secretary-General and the Maintenance of Peace*, p. 181.

(ES-III) (providing for a « good neighbour » policy), and specifically with a view to upholding the purposes and principles of the Charter in relation to Jordan. Jordan also asked for the permanent stationing of diplomatic representatives of the Secretary-General in other Arab States. The latter proposal was not found to be necessary, but the Secretary-General appointed a Special Representative, with his office in Amman [10].

Secretary-General's Special Representative for Cambodia and Thailand

In the two previous examples the diplomatic activities consisted respectively of those of the Secretary-General and of a Special Representative appointed by him, in each case acting pursuant to a General Assembly resolution. In the case under discussion the action was undertaken by the Secretary-General in direct response to a request by the two Governments concerned. In 1958 Thailand and Cambodia informed the Secretary-General of certain difficulties which had arisen between them and requested him to appoint a personal representative, as a means which might help in the resolution of the dispute. The Secretary-General informed the members of the Security Council of his affirmative response and of his appointment of Ambassador Beck-Friis of Sweden as his Representative. The Representative remained in the area, in continuous contact with the two Governments, for a number of years. In the Introduction to his *Annual Report* for 1962-1963 the Secretary-General declared

> « As long as the two Governments consider that my personal representative can help them in dealing with a delicate and often tense situation, I am willing to continue to provide such services whose value and efficiency will depend very much on the goodwill of the two Governments and their sincere desire to normalize their relations » [11].

A second Special Representative (Ambassador de Ribbing, also of Sweden) was appointed in 1966 [12]. The Union of Soviet Socialist Republics protested at the appointment on the ground that it fell outside the competence conferred upon the Secretary-General by the Charter. Argentina and Uruguay defended the right of the Secretary-General to appoint a representative on the basis of Article 99, subject to the observance of two conditions : that the Secretary-General should consult the parties concerned and that he should inform the

[10] *Repertory of Practice of United Nations Organs,* Supplement nº 2, vol. III, pp. 466-467. The post was maintained for a number of years.

[11] *Op. cit., General Assembly Official Records,* Eighteenth Session, Supplement nº 1A, A/5501/Add. 1, pp. 4-5. The Representative at this time was Mr. Nils Gussing (Sweden), who served in 1967 as the Secretary General's Special Representative in the Middle East.

[12] Ambassador de Ribbing had served as the Secretary-General's Special Representative to Oman in 1963; for a summary see *Report of the Secretary-General on methods of fact-finding,* A/5694, paras. 315-319, 1 May 1964.

Security Council of his decision, both of which he had met. It was stated that the Secretary-General « has the authority, and even the duty, to keep himself informed on all matters which may threaten the maintenance of international peace and security and to exert the utmost effort to relieve situations which may become threats to international peace and security »[13]. In September 1967 the mission of the Special Representative was extended until 16 February 1968[14].

Secretary-General's Personal Representative to Laos

Whereas in the Cambodia-Thailand case the matter was not at any stage placed formally before one of the deliberative organs of the United Nations, the Laos case was more involved. In 1958 after the Laotian Government had informed the Secretary-General of what it considered were threats to its security from incursions of troops from North Vietnam, the Secretary-General presented a report to the Security Council in which he proposed the dispatch of Personal Representatives. At the end of its debate the Security Council, however, decided to send a sub-committee to collect information. After the sub-committe had submitted its reports the Secretary-General himself visited Laos. While in Vientiane he appointed the then Executive Secretary of the Economic Commission for Europe as his Special Representative and charged him with « the co-ordination of widespread and important practical activities in the social and economic fields »[15]. The Executive Secretary was followed as Special Representative by another Secretariat member, who was responsible for technical assistance activities; finally Dr. Edouard Zellweger, a Swiss lawyer and politician, was appointed as Special Consultant. The Secretary-General replied to criticisms of his activities and of his appointment of Special Representatives by referring to the provisions of Article 99 and to the request of the Government of Laos made pursuant to the Charter[16].

Secretary-General's Personal Representative to Guinea, 1959

The Secretary-General appointed a Special Representative to Guinea in 1959 after that country had decided not to remain in the French Community. In the course of a statement before a United Nations main committee in which he referred to the appointment of personal representatives for high-level tasks, in circumstances where no threat to international peace was involved, the Secretary-

[13] Letter dated 30 September 1966 from the Deputy Permanent Representative of the Argentine Republic addressed to the President of the Security Council, S/7522, 1 October 1966.

[14] Letter dated 15 September 1967 from the Secretary-General addressed to the President of the Security Council, S/8157, 15 September 1967.

[15] Statement by Secretary-General Dag Hammarskjöld in the Fifth Committee, United Nations Press Release, SG/971, 18 October 1960.

[16] *Idem.* See also GORDENKER, *op. cit.*, pp. 152 et ss.

General distinguished between technical assistance missions which had little political impact and those which were more centrally involved in the affairs of the country concerned. Referring to the second variety he declared :

> « ... is it to be considered illegal if the Resident Representative in a regular technical assistance mission frequently is called in by the Cabinet for discussions and, maybe, has direct access also to the Chief of State ? But if that is not the case, what is then the difference between a technical assistance mission and a special representative of the kind against which objections are now raised and of which you find examples in Laos and Guinea ? » [17].

Secretary-General's Special Representative in Cyprus

Since 1964 the Secretary-General has stationed a Special Representative in Cyprus, charged with maintaining official contacts with the Cyprus Government and the Turkish Cypriot leadership and with the Governments in Ankara and Athens. In addition, during the crisis in November 1967 regarding Cyprus the Secretary-General addressed an urgent appeal to the President of Cyprus and the Prime Ministers of Greece and Turkey. In the course of this appeal he stated :

> « In view of the prevailing danger and my natural desire to do everything possible to avert war, I am also taking the exceptional step of sending quickly to the three capitals a personal high-level representative to convey directly to the Governments of Cyprus, Greece and Turkey my grave concern and my urgent appeal for utmost restraint, and to assist them in all possible ways to reduce the present tension. I will consult with your Permanent Representative about this immediately » [18].

Mr. Rolz-Bennett, then Under-Secretary for Special Political Affairs, was appointed by the Secretary-General as his Personal Representative late on the same day, after the three States had indicated that they would welcome his appointment [19]. After Mr. Rolz-Bennett had made an initial report on the situation, the Secretary-General issued a further appeal to the three States involved to exercise the utmost restraint and to avoid all acts of force or threats of recourse to force; he also proposed that, as a means of reducing tension, these should be a « substantial reduction of the non-Cypriot armed forces now in hostile confrontation » [20].

[17] Statement referred to in note 15 above. See also Introduction to 1958-1959 Annual Report, *General Assembly Official Records,* Fourteenth Session, Supplement n° 1A, A/4132/Add 1, p. 5.

[18] *Special Report by the Secertary-General on Recent Developments in Cyprus, Addendum,* S/8248/Add. 3, 22 November 1967.

[19] *Ibid.,* S/8248/Add. 4, 23 November 1967.

[20] United Nations Press Release SG/SM/864, CYP/488, 24 November 1967.

Secretary-General's Special Representative in the Middle East

The resolution unanimously adopted by the Security Council on 22 November 1967 with reference to the Middle East (S/RES/242) requested the Secretary-General in operative paragraph 3 « to designate a Special Representative to proceed to the Middle East to establish and maintain contacts with the States concerned in order to promote agreement and assist efforts to achieve a peaceful and accepted settlement in accordance with the provisions and principles in this resolution ». After having conferred informally with the interested parties, the Secretary-General designated Ambassador Jarring of Sweden as his Special Representative [21]. The Special Representative proceeded to the Middle East, and subsequently to capitals elsewhere, in order to hold consultations with the Governments concerned. During the proceedings in the Security Council the question of the mandate under which he was to operate was referred to by a number of speakers. It was not seriously contested that he would function within the general framework of Chapter VI, and not of Chapter VII, of the Charter. The United Kingdom Delegate, whose Government sponsored the resolution, summarized the general understanding as follows :

> « We have not wished to restrict him (the Special Representative) as to the means and methods which he employs, but we have all thought that he should be guided by certain principles. Those principles we have sought to set out in our draft resolution. We believe that it would be a mistake and, indeed, a disservice to the special representative to endeavour in advance to specify exactly and in detail how those principles are to be applied. If we attempted to do so in advance, we would make his task much more difficult — indeed, worse than that we might never agree amongst ourselves on the detailed instructions to be given to him » [22].

Thus, as in the case of the negotiations carried out by the Secretary-General with Peking, the way in which the United Nations representative is to execute the task assigned was left very much to him — within the overall bounds of the system established under the Charter.

B. THE EUROPEAN COMMUNITIES [23]

I shall make no apology for speaking more briefly here in Brussels of the diplomatic practice of the European Communities, for this, I am sure, is a matter as well if not better known to you than it is to me.

[21] Note by the Secretary-General, S/8259, 23 November 1967.

[22] 1381st meeting of the Security Council, S/PV.1381, 20 November 1967.

[23] Amongst a number of excellent studies dealing with the diplomatic activities of the European Communities see in particular P. PESCATORE, « Les relations extérieurs des communautés européennes », *R.C.A.D.I.*, 1961, vol. II, p. 9; W. FELD, « The Competences of the European Communities for the Conduct of External Relations », *Texas Law Review*, July 1965, p. 891; and F.A.M. ALTING VON GEUSAU, « The External Representation of Plural Interests », *Journal of Common Market Studies*, 1967, vol. V, n° 4, p. 426.

Taking first the question of relations between the Communities and their members, it is admittedly difficult to describe these in diplomatic terms — as a matter of imagination it grows progressively harder to regard relations between an institution and its members as diplomatic (and as such external) the smaller the institution. But, conversely, the more close-knit and limited the organization, the more questions of external policy come to the fore. The diplomatic relations of the European Communities are thus a part of the general objective of these organizations of achieving a common face to the exterior. The Council of Ministers and the European Parliament have both endorsed the right of the Communities to exercise the right of legation, but implementation has been halted owing to disagreement over the question of who is to exercise the active side of this right — the European Commissions or the Council of Ministers, or some combination between them ? In practical terms, the detailed instructions and supervision of envoys sent by the Communities could hardly be provided by a body, such as the Council of Ministers, meeting only intermittently. (Though presumably the Committee of Permanent Representatives could act in its stead, for day to day purposes.) As has been seen, the United Nations has mostly chosen to deal with the equivalent problem by reference to the facts of the case : the representatives sent by the United Nations, though sometimes stationed for an indefinite period, have been *ad hoc* emissaries, charged with responsabilities in relation to a particular, usually political, situation; in addition to this underlying circumstance, guidance has been derived from the resolution adopted or, in the absence of a resolution, from the assessment by the Secretary-General of the measures necessary and the possibility of consultations with interested States (such as the principal members of the Security Council in New York). As regards the actual practice of the European organizations in this respect, the only representative permanently stationed and accredited to a foreign Government [24] is the Representative in London of the High Authority of the European Coal and Steel Community who, under special legislation [25], has been granted, together with his staff, a status roughly equivalent to that of an embassy of a foreign State. The Representative reports to the High Authority on economic and political developments of interest to the Community and receives instructions from the High Authority; it is probable that he also acts, in a general capacity, on behalf of the other Communities.

It should also be noted that, in pursuance of the obligations of members to co-operate in securing the objectives of the Communities, meetings of economic *attachés* of the Six are held in capitals to which they are accredited in order to consider questions of common concern; the maintenance of a uniform

[24] N.B., to the Prime Minister and not to the Head of State.

[25] European Coal and Steel Community Act, 1955, 4 Eliz. 2, c. 4. For a short description see E. LAUTERPACHT, *I.C.L.Q.*, 1956, vol. V, p. 132.

external policy in commercial matters is, of course, one of the principal objects of the Communities. Reports of the meetings are sent to the Brussels Secretariat. Meetings of the representatives of member States and of the Brussels staff are also held prior to economic conferences. A major issue which has presented itself with regard to such conferences is whether the representation of a single Community interest and standpoint is to be combined with, or is to replace, the representation of individual member States; so far as the negotiation of agreements is concerned, it may be recalled that under Article 228 of the Treaty of Rome the Commission of the European Economic Community is given exclusive powers to negotiate agreements between the Community and non-member States in the cases provided by the Treaty. The various problems raised have presented themselves both within the Community, when determining the mode of common representation and the policies to be followed, and, outside the Community, as regards institutions normally composed exclusively of States and of which the Six are already members. At meetings held within the framework of UNCTAD a complex system of representation has apparently been arrived at whereby individual member States have continued to be represented as such, retaining their separate voting powers, and the Community has been present either as an observer, when the topic under discussion has been of a general nature — the Community delegation being composed in equal parts of representatives of the Council and of the Commission [26] — or, where the negotiation of an agreement has been involved, as a more active participant. In the latter case the representative of the Commission has acted on behalf of the Community and his position, while less than that of a delegate of a State having full rights of representation, has been such as to enable him to take part in negotiations [27].

By these means — together with the use of Community spokesmen, the establishment of information centres in Geneva, London, New York and Washington [28] and visits of Community officials and of members of the Commissions to third States — the Communities have secured the representation of their interests outside the bounds of the Communities themselves.

[26] See e.g. List of Representatives and Observers, UNCTAD Trade and Development Board, Fifth Session, (TD/8/INF. 9), 1 September 1967.

[27] See the proceedings of the United Nations Sugar Conference, 1968, and the opinion, dated 24 May 1968, given by the Legal Counsel of the United Nations regarding EEC participation. The representatives of the Commission, representing both the six member States and the Community as such, also played a major part in the GATT « Kennedy Round » negotiations. It is clear however that the situation with respect to the representation of the Community, and of individual member States, at international conferences and negotiations is still in the process of evolution.

[28] Registered, it may be noted, under the United States Foreign Agents Registration Act of 1938, as amended. The United Nations maintains fifty information centres, in different countries throughout the world.

IV. SUMMARY

The standard notion of what is meant by " diplomatic activities ", including the « right » to send and receive official envoys, has been formed on the basis of the customary behaviour of States acting within the national state system. Relations between States involving the dispatch of envoys have been conducted within a bilateral framework and on the basis of the consent of both parties; the continuance of those relations is dependent on a differentiation of interests between the two States concerned — or, in other words, on the maintenance of an external policy independent of one another. The internal means whereby that policy is evolved is not considered part of the province of international law, although the equivalent questions are of immediate interest to lawyers concerned with international organizations.

Whereas all sovereign States are, by definition, deemed to have the same legal attributes as one another, including the right to conduct a foreign policy by means, *inter alia,* of the dispatch and reception of official envoys, the question of whether international organizations have a similar capacity cannot be given a uniform answer. One line of reasoning on this issue consists in part of an assimilation of the organization to a State, so as to argue : because the organization is like a State in the following respects, therefore it is to be regarded as having the same capacities as a State in other spheres. This argument was advanced with respect to the League of Nations, which, it was said, could only " properly " be classified as a potential federation in order to be a subject of international law, and was therefore to be deemed, as a consequence of this *a priori* assumption, to have the legal rights enjoyed by a State, such as the right to make treaties and the *ius legationis.* In the case of the European Communities the argument has been repeated, in a more sophisticated form and in a different setting : unlike the League of Nations and its successor only a relatively small number of States are involved; the penetration of these Communities into certain aspects of the life of their member States is greater; and, at least for some of the supporters of the Communities, the Communities *are* designed to lead to federation. In the case of the European Communities therefore, although the relations between the Communities and their members cannot usefully be thought of in terms of diplomatic relations in any way parallel to those maintained between States, relations between the Communities and third States may be regarded as bilateral in character, as well as being conducted by entirely distinct legal entities. The problem which the European Communities have encountered is political : the question of control over the right of active legation (if one were to be exercised) has caused the right to remain only partly realized. The disadvantages of this have been offset by a number of factors, of which two may be mentioned : the Communities have been able to draw information and, to some extent, secure representation of their views in third States by means of the diplomatic services of their member

States (as well as by *ad hoc* visits of Community officials); and, secondly, the Communities have been represented as such at the major external meetings when business immediately affecting them was discussed — the prime examples being discussions within the framework of GATT and UNCTAD.

The position with respect to the United Nations (by comparison with that of the Communities) bears little or no comparison with that of a State. The Organization, in its objectives no less than in its membership, is designed to be universal; no question of an external foreign policy arises. The Organization possesses, however, a personality independent of that of its members and its objectives, as set out in the opening articles of the Charter, would deny it virtually no legal capacity it might need for its functioning. As was said by the International Court in the *Reparations Case* [29], the Charter has not been content to make the Organization created by it merely a centre « for harmonizing the actions of nations in the attainment of... common ends » [30]. « It has equipped that centre with organs, and has given it special tasks ». The practice of the United Nations « has confirmed this character of the Organization, which occupies a position in certain respects in detachment from its Members, and which is under a duty to remind them, if need be, of certain obligations. It must be added that the Organization is a political body, charged with political tasks of an important character, and covering a wide field namely, the maintenance of international peace and security, the development of friendly relations between nations, and the achievement of international co-operation in the solution of problems of an economic, social, cultural or humanitarian character [31]; and in dealing with its Members it employs political means ».

The United Nations has not, of course, escaped the problem of political control over its activities. By the mere fact of its looser structure, however, it has managed to bypass some of the conflits which the European Communities have encountered.

Thus in the particular context of the dispatch of representatives to perform diplomatic tasks, not only has the United Nations never sought to claim the right *in abstracto*, which in itself might have provoked opposition, but has had two means by which to proceed. As part of the overall pattern of international relations established under the Charter, the Security Council and the General Assembly may either appoint an executive diplomatic agent or request the Secretary-General to designate one in order to perform a particular task, or the Secretary-General may himself so act, either pursuant to an Assembly or Security Council resolution or under his own inherent powers. Some of the

[29] *Reparation for Injuries suffered in the Service of the United Nations, I.C.J. Reports, 1949*, p. 174 at pp. 178-179.

[30] Article 1, paragraph 4.

[31] Article 1.

main illustrations of activities undertaken in this sphere have been briefly surveyed in the preceeding section.

There is one further argument which should be noted against the allocation of these activities, including the dispatch of representatives, to the category of diplomatic activities, and that is the argument that, although the methods used (discussion, negotiation, the collection of information, etc.) are the same as those traditionally used by diplomatic missions, the objects are different; the spheres concerned are chiefly those of international peace and security. As I have shown in the list of illustrations, this is not exclusively so. More basically, however, this argument relates, in the last resort, to the question of the purposes for which the Organization may seek representation, which in turn is related to the question of the determination of the " policy " of the Organization, — that is to say, how the Organization shall act, in pursuance of its objectives, on any given occasion. This question, as has been pointed out, does not normally arise for consideration by international lawyers with respect to States; the objects for which a State may use its powers are an assumed knowledge — one of the *données* in the equation. The fact, however, that the United Nations has a legal status independent of its members, and does not require the consent of all its members for its actions, enables the Organization to formulate its " policy ", as expressed in the resolutions of its principal organs, which may be distinct from that of its individual members; furthermore even in the absence of a resolution, the purposes and principles of the Charter, together with the unique position of the Secretary-General, may enable diplomatic action to be taken, including the dispatch of representatives to individual member and non-member States, in particular instances. As I have tried to show, in a significant number of examples this has in fact been the practice followed by the Organization, as part of that " diplomacy of reconciliation " or " paradiplomacy " to which it is, by its nature, committed.

In conclusion, therefore, we are left with a more intricate model of the political universe than we started with. Diplomatic activities between States, formally on a bilateral pattern though never in fact conducted by any two States in complete isolation of others, are no longer the exclusive sphere wherein diplomacy is conducted. Apart from the work performed at meetings of international organizations, the organizations may themselves engage in diplomacy, not merely as part of the « conference diplomacy » at their headquarters, but by the dispatch of representatives, either to third States, in the case of major regional bodies, or to member or non-member States, in the case of the principal universal organizations. The extent to which international organizations in either category will actually do so will depend on the nature of their functions, as set out in their constituent instruments and developed in practice, and on successful resolution, within the bounds of each organization, of the question of political control over any representative sent. It is this latter

issue which has so far presented the greatest dificulty, and it may be a means of diminishing this to point out that, without specifically claiming a right of legation, the United Nations has in practice found it necessary to dispatch a number of *ad hoc* representatives for purposes falling within the purview of the Organization and, in the case of European Communities, both the Council of Ministers and the European Parliament have endorsed the formal right of the Community to send envoys; while Community representatives have not yet been sent to third States on a permanent basis, they have made frequent visits to non-member countries and have already played a prominent part in multilateral conferences and negotiations.