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REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS NINETEENTH SESSION

Report of the Sixth Committee

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I. INTRODUCTION

1. At its 1564th plenary meeting, on 23 September 1967, the General Assembly decided to include the item entitled "Report of the International Law Commission on the work of its nineteenth session" in the agenda of its twenty-second session and to allocate the item to the Sixth Committee.
2. The Sixth Committee considered this item at its 957th to 968th meetings, from 26 September to 11 October 1967, and at its 970th to 974th meetings, from 12 to 18 October 1967.
3. At the 957th meeting, on 26 September 1967, at the invitation of the Chairman of the Sixth Committee, Sir Humphrey Waldock, Chairman of the International Law Commission at its nineteenth session, introduced the Commission's report on the work of that session.^{1/} At the 968th meeting, on 11 October 1967, he commented on the observations which had been made during the debate on the report.
4. The report of the International Law Commission on the work of its nineteenth session, held at Geneva from 8 May to 14 July 1967, consisted of the following three chapters: I. Organization of the session; II. Special missions; III. Other decisions and conclusions of the Commission. Chapter II of the report contained the final draft articles on special missions adopted by the Commission in 1967. An annex to the report reproduced the comments of Governments on the provisional draft articles on special missions adopted by the Commission in 1965.

^{1/} Official Records of the General Assembly, Twenty-second Session, Supplement No. 9 (A/6709/Rev.1 and Rev.1/Corr.1).

II. PROPOSALS AND AMENDMENTS

5. During the consideration of this item by the Sixth Committee, two draft resolutions were proposed, one taking note of the report of the International Law Commission and dealing with the Commission's future work and other matters mentioned in the report, and the other dealing exclusively with the topic of special missions. The two draft resolutions and the revisions, proposals or amendments thereto are reproduced in paragraphs 6 to 13.

A. Report of the International Law Commission

6. On 6 October 1967, Colombia, Ecuador, Guatemala, and Nigeria submitted a draft resolution^{2/} (A/C.6/L.617), which read as follows:

"The General Assembly,

"Having considered the report of the International Law Commission on the work of its nineteenth session,

"Recalling its resolutions 1686 (XVI) of 18 December 1961, 1765 (XVII) of 20 November 1962, 1902 (XVIII) of 18 November 1963, 2045 (XX) of 8 December 1965 and 2167 (XXI) of 5 December 1966, by which it recommended that the International Law Commission should continue its work of codification and progressive development of the law of State responsibility, succession of States and Governments and relations between States and inter-governmental organizations.

"Emphasizing the need for the further codification and progressive development of international law in order to make it a more effective means of implementing the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations and to give increased importance to its role in relations among nations.

"Noting with satisfaction that at its nineteenth session the International Law Commission adopted the final text of its draft articles on special missions,

^{2/} The draft resolution was introduced by the representative of Guatemala at the 964th meeting, on 9 October 1967. The representative of Guatemala specified that Nigeria was one of the sponsors of the draft resolution although its name did not appear in document A/C.6/L.617.

"Noting further with appreciation that the United Nations Office at Geneva organized in May and June 1967, during the nineteenth session of the International Law Commission, a third session of the Seminar on International Law for advanced students and young government officials responsible in their respective countries for dealing with questions of international law, that the seminar was made possible by the generous collaboration of members of the Commission, that five Governments offered scholarships for participants from developing countries, and that the Commission recommended that further seminars should be held in conjunction with its sessions.

"1. Takes note of chapters I and III of the report of the International Law Commission on the work of its nineteenth session;

"2. Expresses its appreciation to the International Law Commission for the work it has accomplished;

"3. Notes with approval the programme of work for 1968 proposed by the International Law Commission in chapter III of its report;

"4. Recommends that the International Law Commission should:

(a) Continue its work on succession of States and Governments and relations between States and inter-governmental organizations, taking into account the views and considerations referred to in General Assembly resolutions 1765 (XVII) and 1902 (XVIII);

(b) Study the topic of most-favoured-nation clauses in the law of treaties;

(c) Carry out a review of its programme and methods of work;

(d) Expedite the study of the topic of State responsibility and take it up at the earliest opportunity;

"5. Expresses the wish that, in conjunction with future sessions of the International Law Commission, other seminars be organized which should continue to ensure the participations of a reasonable number of nationals of developing countries;

"6. Requests the Secretary-General to forward to the International Law Commission the records of the discussions at the twenty-second session of the General Assembly on the report of the Commission."

7. The sponsors of the draft resolution, together with Bulgaria, submitted a first revision (A/C.6/L.617/Rev.1) in which the order of sub-paragraphs (c) and (d) of operative paragraph 4 of the original draft was reversed.

8. The sponsors of the revised draft resolution submitted a second revision (A/C.6/L.617/Rev.2), introducing the following changes:

(a) The second preambular paragraph was redrafted to read:

"Recalling its resolutions 1686 (XVI) of 18 December 1961, 1765 (XVII) of 20 November 1962, 1902 (XVIII) of 18 November 1963, 2045 (XX) of 8 December 1965 and 2167 (XXI) of 5 December 1966, by which it recommended that the International Law Commission should continue its work of codification and progressive development of the law of succession of States and Governments, relations between States and inter-governmental organizations and State responsibility."

(b) The fifth preambular paragraph was changed to read:

"Noting further with appreciation that the United Nations Office at Geneva organized in May and June 1967, during the nineteenth session of the International Law Commission, a third session of the Seminar on International Law for advanced students and young government officials responsible in their respective countries for dealing with questions of international law, that the seminar was made possible by the generous collaboration of members of the Commission, that more scholarships were made available for participants from developing countries, and that the Commission recommended that further seminars should be held in conjunction with its sessions."

(c) In operative paragraph 4 the words "and take it up at the earliest opportunity" were deleted from sub-paragraph (c) (sub-paragraph (d) of the original draft).

B. Special missions

9. On 9 October 1967, Argentina, Cameroon, Canada, Ecuador, Guatemala and Nigeria submitted a draft resolution (A/C.6/L.618), which read as follows:

"The General Assembly,

"Having considered chapter II of the report of the International Law Commission on the work of its nineteenth session, which contains final draft articles and commentaries on special missions,

"Recalling that in its resolutions 1687 (XVI) of 18 December 1961, 1902 (XVIII) of 18 November 1963 and 2045 (XX) of 8 December 1965 it recommended that the International Law Commission should continue the work of codification and progressive development of the topic of special missions, taking into account the views expressed in the General Assembly and the comments submitted by Governments, and that in its resolution 2167 (XXI) of 5 December 1966 it recommended that a final draft on special missions should be submitted to the Assembly by the Commission in its report on the work of its nineteenth session,

"Noting further that at its eighteenth and nineteenth sessions in 1966 and 1967, the International Law Commission, in the light of the observations and comments submitted by Governments and taking into account the relevant resolutions and debates of the General Assembly, revised the provisional draft articles on special missions prepared at its sixteenth and seventeenth sessions and that at its nineteenth session the Commission finally adopted the draft articles,

"Recalling that, as stated in paragraph 33 of the report of the International Law Commission on the work of its nineteenth session, the Commission decided to recommend to the General Assembly that appropriate measures be taken for the conclusion of a convention on special missions,

"Mindful of Article 13, paragraph 1 (a), of the Charter of the United Nations, which provides that the General Assembly shall initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification,

"Believing that the Vienna Conventions on Diplomatic and Consular Relations have contributed to the fostering of friendly relations among nations, irrespective of their differing constitutional and social systems, and that they should be completed by a convention on special missions and their privileges and immunities,

"1. Expresses its appreciation to the International Law Commission for its valuable work on special missions and to the Special Rapporteur for his contribution to this work;

"2. Invites Member States to submit, not later than 1 July 1968, their written comments and observations on the final draft articles on special missions prepared by the International Law Commission;

"3. Requests the Secretary-General to circulate the comments submitted by Member States on the subject, so as to facilitate its consideration by the General Assembly at its twenty-third session, in the light of those comments;

"4. Decides to include an item entitled 'Special Missions' in the provisional agenda of its twenty-third session."

10. On 12 October 1967, Dahomey, Ethiopia, Ghana, Kenya, Mali, Morocco, Senegal, the United Republic of Tanzania and Zambia submitted an amendment (A/C.6/L.620) to the draft resolution proposing that operative paragraph 4 be replaced by the following text:

/...

"4. Decides to include an item entitled 'Draft Convention on Special Missions' in the provisional agenda of its twenty-third session, with a view to the adoption of such a convention by the General Assembly."

Subsequently, Somalia added its name to the list of sponsors of the amendment (A/C.6/L.620/Add.1).

11. On 16 October 1967, Iraq submitted an amendment (A/C.6/L.622) reading as follows:

"Add the following operative paragraphs 5 and 6:

"5. Requests the Secretary-General to arrange for the presence of the Special Rapporteur on Special Missions as an expert during the debates on the topic at the twenty-third session, and to submit at that session all relevant documentation;

"6. Invites Member States to include as far as possible in their delegations to the twenty-third session of the General Assembly experts competent in the field to be considered."

12. At the 973rd meeting, on 17 October 1967, Nigeria proposed orally that operative paragraph 4, as worded in document A/C.6/L.620, should be made operative paragraph 6 of the draft resolution and that operative paragraphs 5 and 6, as worded in document A/C.6/L.622, should become operative paragraphs 4 and 5 respectively. However, at the same meeting, Ecuador, supported by Guatemala, made oral proposal that the order of operative paragraphs 4, 5 and 6 should be that appearing in documents A/C.6/L.620 and A/C.6/L.622.

13. Also at the 973rd meeting, the representative of the Secretary-General made an statement relating to the financial implications of paragraph 5 of the amendment proposed by Iraq in document A/C.6/L.622. He explained that since under that paragraph the Secretary-General would be requested to arrange for the presence of an expert at the twenty-third session of the General Assembly, the person referred to in the paragraph would be entitled to receive a fee and travel and subsistence expenses. The expenditure involved was tentatively estimated at \$5,000.

III. DEBATE

14. Before turning to the matters dealt with in the report of the International Law Commission, many representatives congratulated the Commission on its work and emphasized the importance of the codification and progressive development of international law for the stability of international relations and the security of mankind. Far from being routine, the examination of the reports of the Commission was one of the most important tasks of the Sixth Committee. It was also a guarantee that the Commission's work would be directed towards furthering the interest of the international community.

15. The main aspects of the discussion of the Commission's report are summarized below in two sections. The first section (paragraphs 16 to 78) is devoted to the discussion of the draft articles on special missions as set out in chapter II of the report. The second section (paragraphs 79 to 96) is devoted to the discussion of the other decisions and conclusions of the Commission which form the subject matter of chapter III of the report.

A. Draft articles on special missions

16. Many representatives paid a warm tribute to the International Law Commission and its Special Rapporteur, Mr. Milan Bartoš^V, for the successful conclusion of the work on special missions by the adoption and submission to the General Assembly of fifty draft articles on the topic. The draft articles represented a valuable addition to the Commission's work on diplomatic and consular relations. Some representatives stressed the importance of the codification of the law on special missions for the stability of relations between States and the strengthening of friendship between nations. Others congratulated the Commission on having overcome the difficulties arising from the fact that there was not the same degree of uniformity in the practice of States in the case of special missions as in the case of permanent diplomatic or consular missions. The Commission had at times incorporated into the draft articles elements of lex ferenda, but it had on the whole maintained a proper balance between progressive development and codification of international law.

17. The debate on the draft articles on special missions is reviewed below under four headings. The first is devoted to observations of a general nature, the second to observations relating to specific provisions, the third to suggestions for the addition of new articles and the fourth to the discussion of the measures to be taken for the conclusion of a convention on special missions.

1. General observations on the draft articles

18. In their general observations on the draft articles, representatives referred mainly to the four questions which are dealt with below in sub-sections (a) to (d).

(a) The effects of the requirement that a special mission must have a representative character

19. A number of representatives recalled that the Chairman of the International Law Commission had pointed out that the hallmark of a special mission was its representative character, that is, its position as an organ representing the sending State. The Commission had introduced this element in the definition of special missions at its nineteenth session (paragraph (a) of article 1). It had thus limited the scope of the draft articles by drawing a line between those missions which should attract the operation of the draft articles, including the provisions on privileges and immunities, and those which, because they did not represent the sending State, should be considered merely as visits under official auspices.

20. Several representatives pointed out that by limiting the scope of the draft articles to special missions of a representative character, the Commission had rendered unnecessary any distinction between various types of special missions, and in particular between low-level, standard and high-level missions. Low-level missions, usually of a technical nature, did not have a representative character and fell outside the scope of the draft articles. High-level missions were accorded the same status as standard missions but, as expressly stated in article 21, their members retained all the additional facilities, privileges and immunities accorded to them by international law.

- (b) The requirement of mutual consent and the right to derogate from the draft articles

21. Several representatives noted with approval that the draft articles required the mutual consent of the sending and the receiving States for the establishment of a special mission. This consensual element, which was a corollary of the principle of the sovereign equality of States, gave a considerable degree of flexibility to the draft articles. Indeed, nothing in the draft articles prevented the sending and receiving States from agreeing to give to a particular mission a status either smaller or greater than the one laid down as the general standard for special missions.

- (c) The extent of the facilities, privileges and immunities to be granted under the draft articles

22. Many representatives noted that, as expressly stated by the Commission in its commentary, the draft articles on special missions were based on the Convention on Diplomatic Relations. Most of the provisions relating to facilities, privileges and immunities reproduced with minor changes the terms of the corresponding provisions of that Convention.

23. A number of representatives expressed the view that the assimilation in this respect of special missions to permanent diplomatic missions would lead to an unnecessary multiplication of facilities, privileges and immunities. They held that special missions and their members should enjoy only those facilities, privileges and immunities which were strictly necessary for the performance of their tasks. One representative doubted whether a simple transposition of diplomatic law, as expressed in the Convention on Diplomatic Relations, was really feasible. One of the main elements on which diplomatic privileges and immunities were based was the stability of the missions and the responsibility of the head of the mission for the conduct of his staff; yet special missions were by their very nature highly unstable. Another representative suggested that the draft articles should be modelled on the Convention on Consular Relations rather than on the Convention on Diplomatic Relations.

24. Other representatives held, on the contrary, that the Commission had been justified in taking as a basis the Convention on Diplomatic Relations. In order to perform their task satisfactorily, special missions and their members required most of the facilities, privileges and immunities enjoyed by diplomatic missions and their members. Moreover, the limitation of the scope of the draft articles to special missions of a representative character and the possibility given to States to derogate by common agreement from the draft articles removed any danger of an undue extension of facilities, privileges and immunities.

(d) Terminology

25. Some representatives stated that the terminology employed in the draft articles lacked uniformity and that an attempt should be made to remedy the situation, with particular attention to the terms used in the Vienna Conventions. As an example of inconsistent terminology, one representative cited the expression "required for the performance of its functions" in article 22 and the expression "necessary for the performance of the functions of the special mission" in article 27. His delegation preferred the term "necessary". A representative pointed out that, in the French text, the Convention on Diplomatic Relations used the terms "Etat accréditant" and "Etat accréditaire" and the Convention on Consular Relations used the terms "Etat d'envoi" and "Etat de résidence". In the draft articles on special missions, the latter term was replaced by "Etat de réception". He suggested that the terms "Etat d'origine", on the one hand, and "Etat de résidence" or "Etat d'accueil", on the other, should be adopted. Another representative expressed the view that the Spanish text of the draft articles could be slightly improved by deleting in several places, where the context was sufficiently clear, the expression "que envía" which followed the word "Estado".

2. Observations on specific provisions

26. In addition to their general observations, representatives made numerous references to the preamble and to specific provisions of the draft articles on special missions.

Preamble

27. A representative noted with approval that the preamble submitted by the Commission was similar to the preamble of the Vienna Conventions of 1961 and 1963. Another representative suggested that the preamble should include a statement of the principle that special missions were a form of diplomatic activity designed to promote the interests of international peace and security and to contribute to co-operation among States based on the principles of sovereignty and independence, equality of rights, non-interference in the domestic affairs of States and mutual advantage.

Article 1 (Use of terms)

28. Several representatives expressed satisfaction with the definition of a special mission contained in paragraph (a) of article 1, which brought out the three main criteria of such a mission, namely, its representative character, its temporary duration and the specific nature of its task. Some representatives, however, considered that the definition should have also included a reference to the requirement of mutual consent. It was pointed out that in the absence of such a reference the concept of special missions could be established only by a close reading of three separate provisions, namely, articles 1, 2 and 3.

29. It was suggested that the first criterion of the definition meant that the special mission must be invested with representative power by the sending State; in other words, that it must have the legal capacity to express the will of that State within the framework of its specified task. It was also maintained that the word "representative" should be interpreted in its broadest possible sense. The use of the word, however, did not imply that a special mission must be generally representative of the sending State. Actually, in most cases the task of a special mission would be limited to a particular aspect of the functions of its Government.

30. One member criticized the expression "representative character" as an anachronism from the days when diplomats had been regarded as representing the person of their sovereign and sharing his attributes. Other members held that the

expression was ambiguous and that an attempt should be made to formulate an exact definition of its meaning. It was suggested that a representative mission should be defined as a mission sent by a State, constituted objectively according to the criteria of international law, or as a mission sent by any authority regarded by the receiving State as comparable to a subject of international law. It was also suggested that the question whether a particular special mission had a representative character was a matter to be determined by the sending State.

31. Referring to paragraph (b) of article 1, a representative noted that this paragraph contained a description of the term "permanent diplomatic mission", although that term was not defined in the 1961 Vienna Convention. He expressed the view that this was hardly a desirable step, since it might introduce new elements into international diplomatic law. Another representative suggested that paragraphs (b) and (c) of article 1 should be deleted, since they presupposed that the parties to the Convention on special missions would also be parties to the Vienna Conventions.

32. As regards paragraph (h), a representative said that although it could be assumed that the members of the diplomatic staff referred to in that provision were regular members of the diplomatic corps in the receiving State, it would be preferable to state so expressly in the text of the article or in the commentary. Another representative contended that the definitions in paragraphs (h) and (i) were tautological.

33. Referring to the Commission's commentary on article 1, a representative expressed the view that States as such were not the only recognized subjects of international law; nations struggling for their liberation and sometimes actually controlling a particular territory also had to be taken into account. He suggested that the right of those nations to send special missions should be recognized in a clear provision to that effect.

Article 2 (Sending of special missions)

34. A representative observed that the principle that international law was based on the will and agreement of States - a principle which had been strongly affirmed in article 2 of both the Convention on Diplomatic Relations and the Convention on

Consular Relations - was expressed less forcefully in article 2 of the draft on special missions. The fact that the reference to the consent of the receiving State appeared only at the end of that provision seemed to detract from the importance of such consent. He therefore suggested that article 2 should be redrafted in order to lay more emphasis on the requirement of the consent of the receiving State.

Article 4 (Sending of the same special mission to two or more States)

35. Doubts were expressed about the advisability of retaining article 4 on the ground that it was based solely on political considerations. The situation referred to in the article was regulated, from the legal point of view, by the provisions of article 2, which made consent a indispensable condition for the sending of a special mission.

Article 7 (Non-existence of diplomatic or consular relations
and non-recognition)

36. Article 7 was commended by several representatives, who pointed out that experience showed that special missions had played a particularly useful role when there were no diplomatic relations or recognition. Other representatives, however, expressed reservations about the article.

37. Several representatives shared the view expressed by the Commission in its commentary on article 7 that the question whether the sending or reception of special missions prejudged the problem of recognition lay outside the scope of the draft articles. Others held, on the contrary, that the question could not be ignored. One representative proposed the addition to article 7 of a third paragraph reading:

"The sending or receiving of a special mission, as contemplated in paragraph 2 hereof, shall not of itself be construed as constituting an act of recognition of the receiving State by the sending State."

Article 9 (Composition of the special mission)

38. A representative welcomed the fact that the Commission had decided not to include in article 9 any provision similar to that of article 11 of the Convention on Diplomatic Relations, which authorized the receiving State to limit the size of a diplomatic mission.

Article 12 (Persons declared non grata or not acceptable)

39. It was suggested that the distinction made in article 12 between persons declared "non grata" and persons declared "not acceptable" was unnecessary.

Article 14 (Authority to act on behalf of the special mission)

40. Referring to the provision of paragraph 1 which authorized the head of a special mission to address communications to the receiving State, some representatives observed that the normal channel for such communications should be the permanent diplomatic mission of the sending State in the receiving State.

Article 16 (Rules concerning precedence)

41. Several representatives criticized the provision in paragraph 1 that precedence among special missions should be determined by the alphabetical order of the names of the States. One representative suggested that the alphabetical order should be supplemented by the principle of rotation. Another raised the problem of countries whose language did not have an alphabet. Some representatives held that the State on whose territory special missions were meeting should be free to apply in the matter the rules of its own protocol.

42. Recalling that the Commission had decided to make no distinction between special missions of various types, a representative suggested the deletion of paragraph 2 of article 16.

Article 17 (Seat of the special mission)

43. Some representatives doubted whether it was necessary to devote a provision of the draft articles to the seat of special missions since the latter were, by definition, of a temporary character.

Article 18 (Activities of special missions on the territory of a third State)

44. Some representatives noted with approval that paragraph 1 of article 18 expressly stated that the third State retained the right to withdraw its consent to the meeting of special missions on its territory.

Article 24 (Exemption of the premises of the special mission from taxation)

45. Doubts were expressed about the possibility of applying in practice the exemption from taxation provided for in article 24.

Article 25 (Inviolability of the premises)

46. It was suggested that a clause should be inserted in paragraph 1 to make it clear that when the special mission concerned was of a high level the head of the permanent diplomatic mission could not authorize the agents of the receiving State to enter the premises of the special mission without the consent of the head of the mission.

47. The last sentence of paragraph 1 was criticized on the ground that it might lead to dangerous abuses. Several representatives suggested that the paragraph should be redrafted so as to make it clear that entry into the premises of a special mission should never be allowed without the consent of a representative of the sending State. It was observed that the functions of special missions were similar to those of diplomatic missions whose premises could not be entered under any circumstances in accordance with the terms of the Vienna Convention of 1961. The following text was suggested:

"The premises of the special mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the special mission."

Other representatives, however, recalled that the last sentence of paragraph 1 was modelled on a provision of article 31 of the Convention on Consular Relations. Since that provision had proved acceptable in the case of a consular office, there was no reason to fear its abuse with regard to a special mission, which was temporary in character and was likely to share buildings with other occupants by short-term lease or otherwise: this made it all the more imperative to retain the draft of the International Law Commission.

Article 28 (Freedom of communication)

48. It was suggested that in the second sentence of article 28, the words "in the receiving State" should be added after "wherever situated".

Article 29 (Personel inviolability)

49. It was suggested that the personal inviolability accorded to members of special missions should be strictly limited to the performance of their functions.

Article 30 (Inviolability of the private accommodation)

50. Some representatives criticized article 30 on the ground that it provided for excessive privileges and immunities. It was contended in support of that position that the receiving State could not be required to provide special protection for the private accommodation of members of special missions, which were usually hotel rooms.

Article 31 (Immunity from jurisdiction)

51. A representative expressed the view that article 31 sought to grant special missions greater privileges and immunities than were really necessary. Another suggested that it would be preferable to adopt for the drafting of the article the conservative approach reflected in article 22, under which the receiving State need accord only such facilities as were required for the performance of the special mission's functions "having regard to its nature and task".

Article 33 (Exemption from dues and taxes)

52. A representative doubted that the exemptions granted under article 33 were justified. Another representative expressed the view that these exemptions were likely to give rise to serious difficulties in practice.

/...

Article 35 (Exemption from customs duties and inspection)

53. As in the case of article 33, a representative doubted that the exemptions granted under article 35 were justified. Another representative expressed the view that it would be too much to expect developing countries to afford all temporary missions the same customs exemptions as were accorded to permanent missions. The extent of the privileges to be granted to temporary missions should be determined by the economic possibilities of the receiving State and should be viewed as a courtesy rather than an obligation.

Article 36 (Administrative and technical staff),
Article 37 (Members of the service staff) and,
Article 38 (Private staff)

54. Articles 36, 37 and 38 were criticized on the ground that they provided for excessive privileges and immunities.

Article 39 (Members of the family)

55. Referring to paragraph 2, one representative expressed the view that it was debatable whether certain privileges and immunities should be granted to members of the administrative and technical staff of the special mission and it was even more debatable whether such privileges and immunities should be extended to their families.

Article 42 (Settlement of civil claims)

56. Several representatives noted with satisfaction that the Commission had included in the draft articles this provision on the settlement of civil claims, which was based on the functional theory of diplomatic immunities.

Article 43 (Transit through the territory of a third State)

57. Some representatives expressed the view that article 43 was an improvement on article 40 of the Convention on Diplomatic Relations since it provided in paragraph 4 that the third State must be informed in advance of the transit of the members of the special mission. One representative, however, criticized the

paragraph for treating a request for a visa as equivalent to a notification of intended transit. That might create considerable, and at times unnecessary, work for the third State concerned.

Article 49 (Professional activity)

58. One representative expressed the view that the use of the expression "en vue d'un gain personnel" in the French text of the article suggested that the persons concerned were permitted to practise professional or commercial activities for the benefit of other persons. He proposed that the expression should be replaced by the words "dans un but de lucre".

Article 50 (Non-discrimination)

59. A representative expressed the view that the inclusion in the draft articles of a provision on non-discrimination could not be justified by the precedent of the Vienna Conventions. He pointed out that, while there was a diplomatic corps and a consular corps, there could be no corps of special missions, for the two notions were incompatible. The Commission might conceivably have adopted an article prohibiting discrimination between special missions sent by two or more States to deal with a question of common interest, which was the hypothesis of article 6, but the blanket provision in article 50 was inconsistent with the consensual element which was fundamental to special missions.

60. Another representative also questioned whether the principle of non-discrimination, as laid down in article 50, was valid in the case of special missions since the variety of purposes for which they were constituted might well justify differences in the treatment accorded them.

3. Suggestions for the addition of new articles

61. It was suggested that the term "representative character" should be clarified through the addition of an article specifying the method of accreditation by the sending State. The article should formulate the rules to govern the appointment of the principal members of special missions, as was done, for example, in article 6 of the draft articles on the law of treaties in respect of plenipotentiaries sent to negotiate and conclude treaties.

62. Some representatives suggested that a new article should be added to the draft expressly affirming the right of States to derogate by common agreement from the provisions relating to facilities, privileges and immunities. Others held, however, that this would not be necessary since the right in question was already recognized in paragraph 2 of article 50.

63. A representative asked whether it would not be possible, by analogy with the two Vienna Conventions, to draft some provisions regarding the functions of special missions. Another representative expressed the wish that an effort should be made to demarcate as precisely as possible the competence of a special mission in relation to the permanent mission, in order to avoid duplication and conflict in the advantages accorded; that might be done by specifying that the division of powers and functions could, in individual cases, be the subject of an agreement between the parties concerned.

64. On the question of high-level missions, it was observed that when a Head of State who had been on an official visit stayed on in the receiving State as a private visitor, he continued to enjoy, according to established practices, all the courtesies extended to him as an official visitor. Article 21, however, seemed to imply that the official visit terminated when the special mission was concluded. It might therefore be advisable to include a new article stating that the privileges and immunities to which a Head of State was entitled under international law could not be reduced and were additional to those accorded to him as a member of a special mission.

65. A representative noted with regret that, contrary to the expectations raised by the report of the Commission on the work of its eighteenth session, the draft articles did not contain any provisions similar to those contained in article 73 of the 1963 Vienna Convention concerning the relationship between the Convention and other international agreements.

4. Discussion of the measures to be taken for the
conclusion of a convention on special missions

66. As regards the measures to be taken for the conclusion of a convention on special missions, the Committee had before it the following recommendation contained in paragraph 33 of the report of the International Law Commission:

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"At the 941st meeting on 14 July 1967, the Commission decided, in conformity with article 23 of its Statute, to recommend to the General Assembly that appropriate measures be taken for the conclusion of a convention on special missions."

67. In introducing the report at the 957th meeting of the Committee, the Chairman of the Commission noted that that recommendation was worded differently from the recommendation submitted in 1966 with respect to the draft articles on the law of treaties. In 1966 the Commission had recommended specifically the convening of an international conference for the purpose of concluding a convention on the law of treaties. He explained that the Commission wished to make it clear that the different form of recommendation submitted in 1967 in no way implied that it did not favour the convening of an international conference in the present instance. The Commission had framed its recommendation in that more general form only because it was aware of the crowded conference programme of the United Nations. It had had in mind that, if there was a risk of a long delay in completing the codification of the law of special missions, the General Assembly might wish to consider the possibility of using some other procedure for concluding a convention, such as having it drawn up by the Sixth Committee itself.

68. The Committee first held a general discussion on the questions raised by the Commission's recommendation and then examined the proposals and amendments which had been submitted in relation to it.

(a) General discussion

69. While some doubts were expressed about the feasibility of codifying the rules relating to special missions, in the form of a convention, most of the representatives who intervened in the debate took the position that it was possible and desirable to conclude a convention on the matter. Three main points of view emerged from the discussion in the Committee.

70. A number of representatives favoured the preparation of a convention on special missions by the Sixth Committee at a regular session of the General Assembly and the adoption of the convention by the Assembly at a plenary meeting. It was argued in support of that solution, which was eventually adopted by the Committee in draft resolution II,^{3/} that it would avoid the considerable expense

^{3/} See section V below.

of convening an international conference. It would also accelerate the conclusion of the convention, since no conference could be convened before 1970 because of the crowded calendar of the Organization. Finally, the preparation of an international convention would enhance the role and the prestige of the Sixth Committee. The Committee's task would be facilitated by the fact that the draft articles on special missions covered familiar ground since they were based on the Convention on Diplomatic Relations. In the past the Committee - and other Main Committees of the General Assembly - had successfully prepared conventions which had been adopted by the Assembly. Some representatives suggested that in order to facilitate the task of the Sixth Committee a working group should meet before the next regular session of the Assembly to review the draft articles prepared by the International Law Commission and to consider any amendments or comments submitted by Governments in the interval.

71. Other representatives held, on the contrary, that the Sixth Committee was not the appropriate forum for the preparation of a convention on special missions. The delegations to the General Assembly lacked the necessary experts for the study of this very technical subject and, in particular, specialists in taxation and customs. Because of its other duties, the Committee would be able to devote only a limited number of meetings at each regular session to the preparation of the convention. No time or money would be saved in the long run. Moreover, in a plenipotentiary conference the discussion would be in two stages, namely, the committee stage and the plenary stage, and the latter might take up a substantial part of the whole period of the conference. By contrast, if the matter were taken up by the Sixth Committee, it would be impossible for the General Assembly in plenary meeting to devote to the drafting of such an important convention the time and attention it deserved.

72. There were also representatives who considered that no decision on the matter should be taken at the present session. The procedure for the preparation of a convention could be chosen only after ripe reflection and the receipt of comments from Governments on the final version of the draft articles prepared by the International Law Commission. It was clear from the debate in the Committee that the draft articles still presented some serious problems in

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connexion with such points as the characteristics and purposes common to special missions, the privileges and immunities they should enjoy, the question of the recognition of States, and the relationship between the proposed convention and previous agreements.

(b) Discussion of proposals and amendments

73. As was indicated above in paragraphs 9 to 13, the Committee had before it a joint draft resolution and two amendments in documents A/C.6/L.618, L.620 and Add.1 and A/C.6/L.622. During the discussion of those documents the positions summarized in the preceding three paragraphs were restated and the following additional comments were made.

Joint draft resolution A/C.6/L.618

74. Some representatives pointed out in support of the joint draft resolution that its adoption would avoid the taking of any decision on the question of procedure at the present session and that it would allow Member States time to consider the most effective method of preparing an international convention which would command wide support. Other representatives, however, criticized the resolution on the ground that it failed to indicate how and when the convention should be prepared.

Amendment A/C.6/L.620 and Add.1

75. One of the sponsors of the amendment explained that, in providing for the consideration of the subject at the next session of the General Assembly, the sponsors had indicated their intention that the Sixth Committee should begin its work at the twenty-third session; if it had not concluded the work by the end of that session, it could of course continue it at the twenty-fourth session, or even at the twenty-fifth session. Another sponsor pointed out that the amendment set no time-limit for the preparation of the convention.

76. Some representatives criticized the amendment on the grounds that it would not allow sufficient time for the preparation of the substantive discussion of the draft articles on special missions. Moreover, the phrase "with a view to the adoption of such a Convention by the General Assembly" prejudged the question of the methods by which a convention on special missions should be drafted.

Amendment A/C.6/L.622

77. In introducing the amendment, its sponsor pointed out that it was based on similar provisions appearing in previous General Assembly resolutions on codification conferences. He also recalled that the Special Rapporteur had devoted several years to the question of special missions and was one of the foremost experts on the matter. His assistance to the Sixth Committee in the preparation of a convention on special missions would be most valuable.

78. Some representatives criticized the second paragraph of the amendment on the ground that it imposed an undue obligation on Member States. Other representatives, however, contended that the paragraph in no way infringed the sovereignty of Member States, since the invitation addressed to them included the words "as far as possible" and they had a perfect right to decline it.

B. Other decisions and conclusions of the International Law Commission

1. Organization of work

79. The observations made in the Sixth Committee on the items of the programme of work of the International Law Commission as set out in chapter III of its report may be summarized as follows:

(a) Succession of States and Governments

80. Several representatives noted with approval the Commission's efforts to expedite the consideration of this topic. It was observed that the matter was all the more urgent since a large body of rules of international law which had come into existence before the emergence of the less developed countries as independent States was still regarded in certain quarters as automatically binding on the new States. In addition, the majority of the so-called customary rules of international law governing the succession of States and Governments were both inequitable and inadequate.

81. A number of representatives expressed approval of the Commission's decision to assign more than one Special Rapporteur to the topic and to divide it into the following main headings:

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- (1) Succession in respect of treaties;
- (2) Succession in respect of rights and duties resulting from sources other than treaties;
- (3) Succession in respect of membership of international organizations.

One representative, however, observed that the division of the topic into three headings assigned to different Special Rapporteurs might adversely affect the unity of treatment of the topic and the uniformity of the terminology employed.

82. As regards the first heading - succession in respect of treaties - several representatives welcomed the Commission's decision to advance the work on the subject as rapidly as possible at its twentieth session. Hope was expressed that the second session of the Conference on the Law of Treaties would be able to take into account the Commission's work on the matter. One representative did not think that it was absolutely necessary for the Commission to concentrate its attention exclusively on the production of draft articles, since article 69 of the draft articles on the law of treaties already dealt with the question of State succession in the form of a general reservation. In his view, the Commission should rather confine itself to submitting a report on the implications of that reservation for the law of treaties as a whole.

83. It was suggested that the third heading - succession in respect of membership of international organizations - should be deleted and that the subject should be considered as a part of the topic on relations between States and inter-governmental organizations. That would enable the Commission to expedite its work on the essential aspects of succession of States and Governments which were of considerable importance to developing States.

(b) State responsibility

84. Some representatives expressed the hope that the Commission would be able to expedite the consideration of this topic, which had been on the agenda for many years. One representative stated that he supported the Commission's decision that only basic and general rules should be laid down on the topic and that this should be done as succinctly as possible. Other representatives considered that the Commission should study the responsibility of States for the violation of generally recognized principles of international law.

85. One representative observed that the number of foreign personnel in developing countries had risen sharply. A State's obligations towards such aliens and the obligations of those aliens towards the host country needed to be defined. While it was still true that individuals could have rights and duties under international law only if endowed with them by virtue of a treaty between States, the rights and duties so conferred could be, and were, directly exercisable by the individuals concerned vis-à-vis States. Two recent examples of international arrangements providing for direct settlement of disputes between States and individuals were the reorganization of the procedures of the Permanent Court of Arbitration in 1962,^{4/} and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States^{5/}, which had come into effect in 1966.

(c) Relations between States and inter-governmental organizations

86. The hope was expressed that the Commission would receive and consider at its next session a report on this topic containing a full set of draft articles on the privileges and immunities of representatives of States to inter-governmental organizations. It was also suggested that due attention should be given to the development of practice and procedures now emerging from inter-state and international activities in Africa.

(d) Additional topics suggested for inclusion in the programme of work

87. Some representatives welcomed the Commission's decision to set aside topics of a limited scope for discussion at times when the larger issues could not be pursued. The fear was expressed, however, that to place topics in such a category would have the effect of belittling their importance since the impression would be given that they lent themselves to more leisurely study than the other problems before the Commission.

^{4/} Rules of Arbitration and Conciliation for Settlement of International Disputes between Two Parties of which only One is a State, American Journal of International Law, Vol. 57, 1963, p. 500.

^{5/} United Nations, Treaty Series, Vol. 575, No. 8359.

88. Several representatives noted with approval that the Commission had placed on its programme the topic of the most-favoured-nation clause and had appointed a Special Rapporteur to deal with it. It was suggested in this connexion that the Commission might wish to ask the United Nations Conference on Trade and Development (UNCTAD) and perhaps also the General Agreement on Tariffs and Trade (GATT) to submit their comments or recommendations before it completed its final text on the topic.

89. Several representatives expressed the hope that the Commission would soon be able to study the right of asylum, both diplomatic and territorial, a subject which the General Assembly had referred to it in 1959 by resolution 1400 (XIV) and which was becoming increasingly important in connexion with the protection of human rights.

90. It was also suggested that the Commission might consider taking up the problem of the use of international rivers and studying model rules for conciliation which might lead to the formulation of new methods for the pacific settlement of disputes. After it had completed its examination of priority issues, the Commission might also study the possibility of revising the draft Declaration on Rights and Duties of States.

(e) Review of the Commission's programme and methods of work

91. Several representatives welcomed the Commission's decision to undertake at its next session a review of its programme and methods of work. It was observed in this connexion that there should be a continuing adjustment of the programme of work, so that the codification and progressive development of international law might always be responsive to the current needs of the community of States. It was also suggested that in the course of the review of its methods of work the Commission should undertake an evaluation of its Statute.

92. One representative expressed the view that it was preferable for the Commission to complete one item of considerable importance rather than to consider several items simultaneously without taking any action. Another observed, however, that the Commission should be able to deal with several items at one session. It was also suggested that the Commission could hold two short regular sessions each year, in preference to extending its summer session and holding a special winter session, as it had had to do recently.

93. Some representatives stressed the need to avoid referring to the Commission issues whose political implications might hinder the accomplishment of its task.

2. Co-operation with other bodies

94. Several representatives noted with approval that the Commission had maintained during the past year its co-operation with regional legal bodies. One representative, however, regretted that the Commission had decided not to send an observer to the 1967 session of the Inter-American Juridical Committee on the ground that the items on the agenda of that session were unrelated to the Commission's present programme of work.

3. Seminar on International Law

95. Many representatives expressed satisfaction at the holding in Geneva of the third Seminar on International Law for advanced students of the subject and young government officials responsible in their respective countries for dealing with questions of international law. Several representatives thanked the members of the Commission and of the Secretariat who had participated in the Seminar and the Governments which had granted scholarships to young specialists from developing countries. Some representatives informed the Committee that their Governments had decided to grant scholarships to participants from developing countries for the next Seminar.

96. Several representatives welcomed the Commission's recommendation that further Seminars be held in conjunction with its sessions and voiced the hope that the Seminars would be continued and developed in the future. The wish was expressed that in the discussion of topics due account would be taken of the views of different schools of international law.

IV. VOTING

A. Report of the International Law Commission

97. At its 970th meeting, on 12 October 1967, the Sixth Committee adopted unanimously the draft resolution submitted by Bulgaria, Colombia, Ecuador, Guatemala and Nigeria (A/C.6/L.617/Rev.2) (see paragraph 99, draft resolution I). At that meeting, the representatives of Bulgaria, Canada, the Dominican Republic, Italy, Morocco, the Netherlands, Norway and the United States explained the vote of their respective delegations.

B. Special missions

98. At its 973rd meeting, on 17 October 1967, the Sixth Committee voted on the draft resolution submitted by Argentina, Cameroon, Canada, Ecuador, Guatemala and Nigeria (A/C.6/L.618). The voting was as follows:

(a) The amendment submitted by Dahomey, Ethiopia, Ghana, Kenya, Mali, Morocco, Senegal, Somali, the United Republic of Tanzania and Zambia (A/C.6/L.620 and Add.1) was adopted by 74 votes to 1, with 22 abstentions.

(b) Paragraph 5 of the amendment submitted by Iraq (A/C.6/L.622) was adopted unanimously;

(c) Paragraph 6 of the amendment submitted by Iraq was adopted by 61 votes to none, with 29 abstentions;

(d) The oral proposal submitted by Ecuador, supported by Guatemala, to maintain the order of paragraphs as it appears in documents A/C.6/L.620 and A/C.6/L.622 was adopted by 72 votes to 2, with 16 abstentions;

(e) Draft resolution A/C.6/L.618, as amended, was then adopted by 92 votes to none, with 2 abstentions (see paragraph 99, draft resolution II).

Statements in explanation of votes were made at the 973rd meeting, on 17 October, by the representative of the Philippines, and at the 974th meeting, on 18 October, by the representatives of Australia, Austria, Belgium, Canada, France, Sweden and the United Kingdom.

V. RECOMMENDATIONS OF THE SIXTH COMMITTEE

99. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolutions:

DRAFT RESOLUTION I

Report of the International Law Commission

The General Assembly,

Having considered the report of the International Law Commission on the work of its nineteenth session,^{6/}

Recalling its resolutions 1686 (XVI) of 18 December 1961, 1765 (XVII) of 20 November 1962, 1902 (XVIII) of 18 November 1963, 2045 (XX) of 8 December 1965 and 2167 (XXI) of 5 December 1966, by which it recommended that the International Law Commission should continue its work of codification and progressive development of the law of succession of States and Governments, relations between States and inter-governmental organizations and State responsibility,

Emphasizing the need for the further codification and progressive development of international law in order to make it a more effective means of implementing the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations and to give increased importance to its role in relations among nations,

Noting with satisfaction that at its nineteenth session the International Law Commission adopted the final text of its draft articles on special missions,

Noting further with appreciation that the United Nations Office at Geneva organized in May and June 1967, during the nineteenth session of the International Law Commission, a third session of the Seminar on International Law for advanced students and young government officials responsible in their respective countries for dealing with questions of international law, that the seminar was made possible by the generous collaboration of members of the Commission, that more

^{6/} Official Records of the General Assembly, Twenty-second Session, Supplement No. 9 (A/6709/Rev.1 and Rev.1/Corr.1).

scholarships were made available for participants from developing countries, and that the Commission recommended that further seminars should be held in conjunction with its sessions,

1. Takes note of chapters I and III of the report of the International Law Commission on the work of its nineteenth session;
2. Expresses its appreciation to the International Law Commission for the work it has accomplished;
3. Notes with approval the programme of work for 1968 proposed by the International Law Commission in chapter III of its report;
4. Recommends that the International Law Commission should:
 - (a) Continue its work on succession of States and Governments and relations between States and inter-governmental organizations, taking into account the views and considerations referred to in General Assembly resolutions 1765 (XVII) and 1902 (XVIII);
 - (b) Study the topic of most-favoured-nation clauses in the law of treaties;
 - (c) Expedite the study of the topic of State responsibility;
 - (d) Carry out a review of its programme and methods of work;
5. Expresses the wish that, in conjunction with future sessions of the International Law Commission, other seminars might be organized, which should continue to ensure the participation of a reasonable number of nationals of developing countries;
6. Requests the Secretary-General to forward to the International Law Commission the records of the discussions at the twenty-second session of the General Assembly on the report of the Commission.

DRAFT RESOLUTION II

Special missions

The General Assembly,

Having considered chapter II of the report of the International Law Commission on the work of its nineteenth session,^{7/} which contains final draft articles and commentaries on special missions,

^{7/} Official Records of the General Assembly, Twenty-second Session, Supplement No. 9 (A/6709/Rev.1 and Rev.1/Corr.1).

Recalling that in its resolutions 1687 (XVI) of 18 December 1961, 1902 (XVIII) of 18 November 1963 and 2045 (XX) of 8 December 1965 it recommended that the International Law Commission should continue the work of codification and progressive development of the topic of special missions, taking into account the views expressed in the General Assembly and the comments submitted by Governments, and that in its resolution 2167 (XXI) of 5 December 1966 it recommended that a final draft on special missions should be submitted to the Assembly by the Commission in its report on the work of its nineteenth session,

Noting further that at its eighteenth and nineteenth sessions, in 1966 and 1967, the International Law Commission, in the light of the observations and comments submitted by Governments and taking into account the relevant resolutions and debates of the General Assembly, revised the provisional draft articles, on special missions prepared at its sixteenth and seventeenth sessions and that at its nineteenth session the Commission finally adopted the draft articles,

Recalling that, as stated in paragraph 33 of the report of the International Law Commission on the work of its nineteenth session, the Commission decided to recommend to the General Assembly that appropriate measures be taken for the conclusion of a convention on special missions,

Mindful of Article 13, paragraph 1 (a) of the Charter of the United Nations, which provides that the General Assembly shall initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification,

Believing that the Vienna Conventions on Diplomatic and Consular Relations have contributed to the fostering of friendly relations among nations, irrespective of their differing constitutional and social systems, and that they should be completed by a convention on special missions and the privileges and immunities of such missions,

1. Expresses its appreciation to the International Law Commission for its valuable work on special missions and to the Special Rapporteur for his contribution to this work;

2. Invites Member States to submit, not later than 1 July 1968, their written comments and observations on the final draft articles on special missions prepared by the International Law Commission;

3. Requests the Secretary-General to circulate the comments submitted by Member States on the subject, so as to facilitate its consideration by the General Assembly at its twenty-third session, in the light of those comments;

4. Decides to include an item entitled "Draft Convention on Special Missions" in the provisional agenda of its twenty-third session, with a view to the adoption of such a convention by the General Assembly;

5. Requests the Secretary-General to arrange for the presence of the Special Rapporteur on Special Missions as an expert during the debates on the topic at the twenty-third session, and to submit at that session all relevant documentation;

6. Invites Member States to include as far as possible in their delegations to the twenty-third session of the General Assembly experts competent in the field to be considered.
