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TWENTY-SECOND SESSION

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SIXTH COMMITTEE, 957th  
MEETING

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*Chairman: Mr. Edvard HAMBRO (Norway).*

### Statement by the Chairman

1. The CHAIRMAN opened the meeting and welcomed the President and the members of the International Court of Justice who were present at the meeting. He also welcomed the President of the International Law Commission, Sir Humphrey Waldock.

### Election of the Vice-Chairman

2. Mr. STANKEVICH (Byelorussian Soviet Socialist Republic) nominated Mr. E. E. Seaton (United Republic of Tanzania).

3. Mr. OGUNDERE (Nigeria), Mr. EL-ARABY (United Arab Republic), Mr. BENJAMIN (United States of America) and Mr. ISINGOMA (Uganda) seconded the nomination.

*Mr. Seaton (United Republic of Tanzania) was elected Vice-Chairman by acclamation.*

### Election of the Rapporteur

4. Mr. HOUBEN (Netherlands) nominated Mr. Sergio González Gálvez (Mexico).

5. Mr. TILINCA (Romania), Mr. AMADO (Brazil) and Mr. ALCIVAR (Ecuador) seconded the nomination.

*Mr. González Gálvez (Mexico) was elected Rapporteur by acclamation.*

### Organization of the Work of the Committee (A/C.6/377)

6. Mr. STAVROPOULOS (Under-Secretary, Legal Counsel) explained that the reason why the Secretariat had not submitted to the Committee at the first meeting, as it had in past years, a paper on the organization of the Committee's work with an indication of the approximate number of meetings to be devoted to each agenda item was that the General Committee had not yet taken a decision on the allocation of certain additional items which might be referred to the Sixth Committee. Consequently, the

Committee could not decide on the organization of its work at the present stage. However, in view of the nature of the six items already referred to it, which were listed in the letter from the President of the General Assembly to the Chairman of the Sixth Committee (A/C.6/377), and in view of the possibility of the allocation of some other items, the Committee would no doubt wish to start its work without awaiting the Assembly's decision.

7. The Committee would be following its usual practice if it began by considering the report of the International Law Commission (A/6709/Rev.1 and Corr.1). An additional reason for doing so was that Sir Humphrey Waldock, the Chairman of the Commission, would have to leave for the United Kingdom on 14 October and was ready to present the report at once. It would be understood that, as soon as the General Assembly decided on the allocation of the additional items, the Committee would interrupt the discussion of the report to organize its work.

8. The CHAIRMAN suggested that, in accordance with the Legal Counsel's suggestion, the Committee should immediately begin its consideration of the report of the International Law Commission on the work of its nineteenth session.

*It was so decided.*

## AGENDA ITEM 85

Report of the International Law Commission on the work of its nineteenth session (A/6709/Rev.1 and Corr.1)

*At the invitation of the Chairman, Sir Humphrey Waldock, Chairman of the International Law Commission at its nineteenth session, took a place at the Committee table.*

9. Sir Humphrey WALDOCK (Chairman of the International Law Commission) said that the nineteenth session—the first session of the Commission with its new membership—had been in some ways a disturbed one, owing to events in the Middle East and elsewhere. For instance, the Special Rapporteur on relations between States and inter-governmental organizations had been obliged to absent himself, and the Commission had therefore been unable to take up that item. As the Special Rapporteur on succession of States and Governments had been elected to the International Court of Justice and the report on State responsibility had not been completed, the Commission had also been unable to consider those topics. Nevertheless, it had been able to complete the draft articles on special missions (A/6709/Rev.1 and Corr.1, Chap. II) and to lay secure foundations for its future work.

10. The Commission's study of special missions had grown out of its work on diplomatic intercourse and immunities. When submitting its draft articles on permanent diplomatic missions to the General Assembly in 1958, the Commission had drawn the attention of the Assembly to what it had characterized as "ad hoc diplomacy" conducted through other forms of diplomatic missions. It had then appointed a special rapporteur for the subject and had prepared a brief draft for use in connexion with the United Nations Conference on Diplomatic Intercourse and Immunities held at Vienna in 1961. The Conference, however, had recommended that the subject should be left over for further study in the light of the Convention on Diplomatic Relations.<sup>1/</sup> In December 1961 the General Assembly in its resolution 1687 (XVI) had endorsed that recommendation, and in 1963 the Commission had appointed Mr. Milan Bartoš as its Special Rapporteur for the topic of special missions. The main energies of the Commission in the years 1963-1966 had been concentrated on completing its draft articles on the law of treaties (A/6309/Rev.1, part II, chap. II), but it had been able at the same time to prepare drafts on special missions and to obtain comments on them from Governments, so that at its nineteenth session it had been in a position to bring its work on special missions to a conclusion.

11. The draft articles on special missions now submitted to the General Assembly were, of course, modelled upon the provisions of the 1961 Vienna Convention on Diplomatic Relations. Moreover, in the interests of uniformity in the drafting of conventions for the codification of international law and of facilitating the task of interpretation, the Commission had, so far as possible, used the *ipsissima verba* of the 1961 Convention. Only in one or two instances, where the drafting of the 1961 Convention had seemed to be definitely inadequate or where an improved working appeared in the 1963 Vienna Convention on Consular Relations,<sup>2/</sup> had the Commission deliberately preferred a text departing from that of the corresponding provision of the 1961 Convention. On the other hand, the Commission had found that the different characters and functions of special missions necessitated not only the introduction of some special provisions but often also minor departures of substance from the corresponding provisions of the 1961 Vienna Convention. As a result, the Commission had not considered it practicable to state the rules for special missions simply by cross-reference to the relevant provisions of the 1961 Convention. Accordingly, it had prepared the draft articles on special missions as an independent instrument which, even if it was in the nature of a protocol to the 1961 Convention, was cast in the form of a wholly separate and autonomous convention.

12. The problem which had particularly occupied the attention of the Commission at its nineteenth session was the definition of the missions which should

be regarded as falling within the concept of a "special mission" for the purposes of the draft articles. There had been no doubt in the mind of the Commission on the point that only temporary missions which were sent to deal with specific questions or perform specific tasks should come within the scope of the draft articles. Nor had it had any doubt that, given a mission having those characteristics, it would make no difference whether its object was political, economic, technical, scientific, cultural or anything else. The crucial point for the Commission had been to find the correct line to draw between those missions which should attract the operation of the convention, including its provisions concerning privileges and immunities, and those which should be considered merely as visits made under official auspices. A number of Governments in their comments had manifested anxiety lest the application of the draft articles should be opened too wide. Some had even suggested that the draft articles should be confined to missions headed by persons of cabinet rank or the equivalent. The Commission had felt that a criterion of that kind might be both unduly restrictive and difficult to formulate in terms appropriate to the circumstances of all countries, but it had accepted the view that it was essential to distinguish between "special missions" properly so-called and other forms of missions. It had concluded that the hallmark of a "special mission", as distinct from other missions, was its "representative" character—its position as an organ representing the sending State.

13. Having arrived at that conclusion, the Commission had been able not only to see more clearly the scope of the operation of the draft articles but also to bring into clearer focus its other main problem, namely, whether, on some matters to establish different rules for different categories of "special missions". That had given rise to two questions: first, whether to differentiate in any way between what might be called "standard" missions and "high-level" missions—i.e., missions led for example, by a Head of State or a Prime Minister—and, secondly, whether to differentiate between "standard" missions and "low-level" missions. The Commission had considered that its decision to confine the scope of the draft articles to missions of a representative character automatically resolved the question of "low-level" missions; for any non-representative mission would fall outside the draft articles, while any "representative" mission should, in principle, attract the application of the standard provisions of the draft articles. As to "high level" missions, the Commission had again concluded that in principle those missions should be governed by the standard provisions of the draft articles, which, after all, were based on the provisions governing permanent diplomatic missions. There, the Commission had taken the view that it was not a question of according a special status to the mission as such, but of according it to the individuals of high rank in the mission. In article 21, therefore, the Commission had made special provision for the cases of Heads of State and other persons of high rank leading or taking part in a special mission, but it had not introduced into the draft articles any special régime for "high-level" missions as such.

<sup>1/</sup> See United Nations Conference on Diplomatic Intercourse and Immunities, *Official Records*, vol. II (United Nations publication, Sales No.: 62.X.1), p. 82.

<sup>2/</sup> See United Nations Conference on Consular Relations, *Official Records*, vol. II (United Nations publication, Sales No.: 64.X.1), p. 175.

14. The Commission's decision not to differentiate between different categories of missions had not, however, been intended to set up a completely rigid code for all special missions. On the contrary, its decision to confine the draft to standard provisions applicable, in principle, to all special missions had been made easier by the very fact that the draft articles already had a built-in element of flexibility in the requirement of consent which governed the establishment of any special mission. There was nothing in the draft articles to preclude sending and receiving States from agreeing to give any particular mission a status either greater or smaller than the status provided in the draft articles as the general standard for special missions.

15. Those decisions of the Commission were an essential clue to the understanding of the draft articles on special missions adopted at the nineteenth session. Having once taken them in the ways which he had explained, the Commission had been able to relate the rules for special missions to those of the 1961 Vienna Convention governing permanent diplomatic missions with much greater confidence. Differences of opinion which had appeared in the Commission on a number of points of substance and which had stemmed from uncertainty as to the precise nature of the missions under discussion had disappeared and a very large measure of agreement had been arrived at without difficulty on the texts of the draft articles. The economical commentaries in the Commission's report might not reveal at first glance the determining role played by those decisions in the shaping of the final draft. It was for that reason that he had thought that it might be helpful to the Committee if he drew particular attention to them.

16. Annexed to the draft articles in the Commission's report was a draft preamble for a convention on special missions. That was a departure from the usual practice of the Commission, which had not in the past drafted texts for preambles. In the present instance, the draft articles on special missions were intended to be an addition to the general body of diplomatic and consular law already codified in the Vienna Conventions of 1961 and 1963. It had therefore seemed appropriate that they should have a preamble on the same lines as the preambles to those Conventions and the Commission had accordingly added a draft of such a preamble.

17. A word of explanation was also necessary regarding the Commission's recommendation to the General Assembly, in paragraph 33 of its report, that appropriate measures be taken for the conclusion of a convention on special missions. That recommendation was worded differently from the Commission's recommendation regarding its draft articles on the law of treaties (A/6309/Rev.1, part II, par. 36); for there it had recommended specifically the convening of an international conference for the purpose of concluding a convention on the law of treaties. The Commission wished him to make it clear to the Committee that the different form of recommendation in no way implied that the Commission did not favour the convening of an international conference in the present instance. It 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. The Commission appreciated that such a solution might present difficulties, but it had felt that those difficulties might be lessened by the fact that the texts of many of the articles were modelled on those already endorsed at the Vienna Conference of 1961—indeed in some cases endorsed a second time at the 1963 Vienna Conference.

18. Before leaving the subject, he wished to recall the tribute paid by the Commission, in paragraph 35 of its report, to the outstanding contribution made by the Special Rapporteur, Mr. Bartoš, to the successful conclusion of its work on special missions.

19. Turning to the subject of the Commission's co-operation with other bodies, he said that observers from the Asian-African Legal Consultative Committee, the Inter-American Juridical Committee and the European Committee on Legal Co-operation had attended the session for varying periods and had informed it of the activities of their respective bodies in the field of codification. The Commission attached considerable importance to its links with regional bodies concerned with the codification of international law, for only in that way could it ensure that legal concepts in different parts of the world did not diverge too far and thus prejudice the efforts of the United Nations for the codification of general international law. The nineteenth session had also seen the first formal contact between the Commission and the International Court of Justice, when Sir Gerald Fitzmaurice had brought the Commission a message of encouragement from the Court.

20. The third session of the Seminar on International Law, organized by the United Nations Office at Geneva, had been no less successful than its predecessors. Twenty-three students, all from different countries, had attended that session and with the aid of scholarships provided by five Governments, a larger number of participants had been able to come from developing countries. The sessions of the Seminar, although organized primarily for the benefit of the students, also served to promote international co-operation in the field of international law, and the Commission favoured their continuance.

21. With regard to its future programme of work, the Commission had to reconcile two opposing considerations. On the one hand, in the limited time at its disposal the Commission could not consider too many topics simultaneously and must concentrate on whatever subject it was codifying. On the other hand, the Commission must assign a sufficient number of subjects to special rapporteurs to ensure that it would not be immobilized if any of the rapporteurs were absent. In addition, the Commission's codification list should always include one or more smaller subjects that could conveniently be taken up during any short gap in the discussion of a big subject.

22. The programme of work evolved by the Commission included three major topics—succession of States and Governments, State responsibility, and relations between States and inter-governmental organizations—the codification of which could well occupy not only the members of the present Commission throughout their entire terms, but also their successors.

23. However, the Commission had had to take account of three facts; first, its Special Rapporteur on succession of States and Governments had ceased to be a member of the Commission; secondly, the Special Rapporteur on State responsibility would be unable to present a substantive report until 1969; and, thirdly, the situation in the Middle East had prevented the Special Rapporteur on relations between States and intergovernmental organizations from attending the nineteenth session. Moreover, the first of those topics had been considered so heavy that its Special Rapporteur had recommended that it should be divided into three main headings, to be entrusted to three different Rapporteurs. Lastly, the preparation of draft articles on one of those headings, succession in respect of treaties, was urgently needed to supplement the draft articles on the general law of treaties. In the light of all those factors, the Commission had decided to appoint its Chairman as Special Rapporteur for the subject of succession in respect of treaties and to give it priority at its twentieth session. It had also decided to ask the Special Rapporteurs to expedite the consideration of the subject of succession in respect of rights and duties resulting from sources

other than treaties, the topic of State responsibility and the topic of relations between States and inter-governmental organizations. Lastly, it had decided to add to its programme of work the topic of most-favoured-nation clauses. The Commission had emphasized that that was not so much a new topic as an expansion of its work on the law of treaties. The Commission had not appointed a Special Rapporteur for the subject of succession in respect of membership of international organizations because it had close connexions both with the subject of succession in respect of treaties and with the topic of relations between States and intergovernmental organizations.

24. The Commission had decided to review at its twentieth session all the questions that had, at one time or another, been proposed for codification and to re-examine its procedures and methods of work under its Statute.

25. The subjects with which the Commission had to deal were of great difficulty and the Commission could only succeed in their codification if it were given the full support of the Sixth Committee and of the General Assembly. He thanked the Secretariat for the excellent service it had given the Commission at its nineteenth session and commended it on the studies it had prepared, which would be of value not only to the Commission but also to any diplomatic conference later convened to deal with its drafts.

*The meeting rose at 12.40 p.m.*