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Chairman: Mr. Edvard HAMBRO (Norway).

Tribute to the memory of Mr. Antonio de Luna, former representative of Spain to the United Nations

On the proposal of the Chairman, the members of the Committee observed a minute of silence in tribute to the memory of Mr. de Luna.

AGENDA ITEM 85

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

1. Mr. YASSEEN (Iraq) said that the death of Professor de Luna was an irreparable loss for all who had known him. His wisdom, moral standing and humanity were an honour to Spain, a great country bound to the Arab world by a common history. He asked the Spanish representative to convey his delegation's sincerest condolences to Mr. de Luna's family.

2. The presence of members of the International Court of Justice at the General Assembly during its twenty-second session and at the International Law Commission during its nineteenth session was a signal development. Nothing in the world was immune to change, and international law, even if codified, was no exception. Its continuing evolution could be better appreciated in a milieu in which current realities and the hopes of the world's peoples found expression. The presence of members of the International Court in international forums was of unquestionable value and he hoped it would continue.

3. Far from being routine, the consideration of the report of the International Law Commission (A/6709/Rev.1 and Corr.1) was one of the most important tasks of the General Assembly in the progressive development and codification of international law. It was a guarantee that the Commission's work would be related to the international scene and directed towards furthering the interests of the international community. He wished to pay a tribute to the Chairman of the

Commission for his admirable statement introducing the Commission's report on the work of its nineteenth session. The third session of the Seminar on International Law, held in conjunction with the Commission's nineteenth session had been a success: the developing countries had been well represented, and the United Nations Office at Geneva was to be congratulated on its choice of participants and on its efforts to ensure the continuation and progress of the Seminar.

4. His delegation considered the organization of the Commission's work satisfactory and welcomed the choice of Special Rapporteurs on succession in respect of treaties, succession in respect of rights and duties resulting from sources other than treaties and on the topic of most-favoured-nation clauses in the law of treaties. Moreover, in his delegation's opinion, the Commission's decision to include a review of its programme and methods of work in the agenda of its twentieth session was extremely wise.

5. The draft articles on special missions (A/6709/Rev.1 and Corr.1, chap. II) were a valid basis for discussion with a view to the conclusion of a multilateral convention. The draft articles were reasonably coherent considering the fact that they dealt with matters on which there was still much uncertainty.

6. The draft rules constituted standard provisions applicable to all special missions. Individuals engaged in missions on behalf of their countries should be entitled to a certain status compatible with their functions. There must be rules to establish that status when the Governments concerned failed to make provisions for an ad hoc status. But the draft rules were not *jus cogens* rules. Governments were therefore free to accord any particular mission a status either more or less favourable than that provided in the draft articles.

7. A "special mission" was described in article 1 (a) as "representative and temporary" and he interpreted the word "representative" in its broadest possible sense. It did not mean that a mission must be generally representative; it could well represent one particular aspect of a Government's function. It would considerably reduce the scope and the usefulness of the draft rules if "representative" were interpreted to mean generally representative of the State.

8. Article 21 concerned the status of the Head of State and persons of high rank. The importance of special missions varied and it was difficult to draw up a code for all categories. The Commission had decided to confine its work to standard provisions applicable to special missions where the sending and receiving Governments had not agreed otherwise. The Commission's decision had meant that it did not have to attempt

to categorize special missions in order of importance. If a Head of State decided to lead a special mission the draft articles on special missions would be applicable; nevertheless, Heads of State as such enjoyed well-defined privileges and immunities under general international law. Ministers for Foreign Affairs also had a certain status under international law. Where special provisions existed in respect of other persons of high rank, they should also be applied. The fact that a person of high rank took part in a special mission did not mean that the status which he enjoyed under general international law should not be recognized. The International Law Commission was to be congratulated on using a method which had enabled it to avoid the difficult task of classifying missions in order of rank.

9. His delegation hoped that every effort would be made to further the conclusion of a general convention on special missions to complement the general body of diplomatic and consular law already codified in the 1961 Vienna Convention on Diplomatic Relations^{1/} and the 1963 Vienna Convention on Consular Relations,^{2/} and thought that the presence of the Special Rapporteur in whatever body examined the draft with a view to the conclusion of a convention would be highly useful.

10. Mr. STANKEVICH (Byelorussian Soviet Socialist Republic) said that his delegation had always considered the codification and progressive development of international diplomatic law to be one of the most important means of achieving world peace and the purposes of the Charter of the United Nations. His delegation accordingly regarded the substantial accomplishments of the International Law Commission at its nineteenth session as very important. As indicated in Sir Humphrey Waldock's statement to the Sixth Committee, the International Law Commission had given thoughtful and thorough consideration to the observations and proposals by Governments (A/6709/Rev.1 and Corr.1, annex I) on the texts of the draft articles on special missions submitted to them for comment, and had taken many of them into account in its final text of the draft articles. As a result, the text before the Committee was better, and expressed the interests of States more fully, than the earlier versions; it demonstrated the great skill of the members of the Commission and their profound knowledge of the present state of international relations, of the rules of international law on special missions, and of the practice of States.

11. His delegation extended its heartfelt thanks to the members of the Commission, and particularly to Mr. Bartoš, the Special Rapporteur on special missions, who had devoted his time and vast knowledge for years to the preparation of the draft articles. The final text represented a valuable addition to the Commission's earlier work on the international law of diplomatic and consular relations and a definite advance in the task of codification undertaken by the United Nations.

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

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

12. The present-day realities of international life, relations between States and indeed the interests of world peace made it essential that States constantly expand and improve economic, political and cultural relations and, consequently, international legal relations and contacts, frequently through the medium of special missions which had a defined sphere of competence and limited tasks. Since in the future those relations among States would surely become even more important, it was essential to keep improving and developing their legal basis.

13. The International Law Commission had rightly decided that special missions had long-established legal forms and roots, and it had been able to identify them, arrange them in a definite system, prepare the most important of them for further codification, and submit fifty draft articles for consideration by the Members of the United Nations.

14. The Byelorussian delegation considered the draft articles an important contribution to the further development of the theory and practice of *ad hoc* diplomacy and thought that they might provide a good basis for a future convention on special missions. As time went by public opinion was acquiring more and more influence over not only the domestic but also the foreign policy activities of Governments, including such activities as the establishment of rules of international law. That process reflected the increasing trend towards democratization in the spheres of law and international life. It required international jurists to draft clear texts that were intelligible not only to specialists but also to the broad masses. The draft articles under consideration could be said to meet that requirement. However, there was always room for improvement and certain provisions could and should be perfected in the light of discussion and of the views and proposals put forward by speakers.

15. One very important point on which the Byelorussian delegation wished to state its views was the scope of the privileges and immunities that should or should not be granted to the staffs of special missions and the members of their families. A number of States had proposed that certain privileges and immunities suggested by the Commission should be either restricted or altogether excluded from the forthcoming convention. However, the Byelorussian delegation found the Commission's proposals on that point quite acceptable since they accorded with the spirit and needs of the times and with contemporary international relations. Each special mission should enjoy the privileges and immunities necessary for the normal and successful exercise of its functions, having regard to its nature and tasks. The International Law Commission had been quite right to take, as a basis for its draft articles, the provisions of the Vienna Convention on Diplomatic Relations, with the necessary changes.

16. His delegation also approved of the draft articles dealing with the legal status of so-called "high-level" special missions.

17. If the Commission's proposals were adopted by all States, without radical changes, there would be a great improvement in the legal basis for the activities of special missions and in contacts between States

which, in turn, would help to strengthen international law and friendship among nations. His delegation was willing to consider and support any proposals that would genuinely improve the articles submitted by the Commission.

18. The 1961 Vienna Convention on Diplomatic Relations had been an important first step towards the codification of diplomatic law. The adoption of the draft articles on special missions would complete the second phase of that task.

19. The Byelorussian delegation supported the view that the draft articles should be in the form of a separate convention, with the headings already proposed, subject to any necessary changes. That would help towards an understanding of the structure of the convention and facilitate its application. As for the procedure for converting the draft articles into international law, his delegation doubted the wisdom of convening an international diplomatic conference. A conference on the law of treaties would be held in two stages, in 1968 and 1969. That meant that a conference on special missions could not be held during either of those years. However, to delay the task until 1970 would not be in the interests of the United Nations. Moreover, economic and practical considerations militated against the convening of yet another diplomatic conference. The Byelorussian delegation therefore felt that the convention on special missions should be adopted at a future session of the General Assembly. Such a course would by no means detract from the importance of the international instrument under discussion.

20. Lastly, although no participants from the Byelorussian Soviet Socialist Republic had attended the Seminar on International Law at its third session, his delegation wished to express its keen appreciation to the International Law Commission for its successful organization of that event. It also welcomed the Commission's recommendation that further seminars should be held in conjunction with its sessions, thus avoiding additional expense for the United Nations.

21. Mr. OGUNDERE (Nigeria) paid a tribute to the memory of Mr. de Luna, a man of great learning whose demise was a loss not only to Spain but to the world at large. He asked the representative of Spain to convey his and his delegation's sympathy to the Spanish Government and to Mr. de Luna's family.

22. The Nigerian delegation wished to express its appreciation of the work accomplished by the International Law Commission at its nineteenth session, and especially of the efforts it had made in producing the draft articles on special missions. The recognition of mutual consent, with its implication of sovereign equality of States as the juridical basis of the draft articles, was most welcome to Nigeria as was the Commission's recognition that it was now accepted in diplomatic practice that a State might send the same special mission to two or more States with the "connecting consent" of each receiving State.

23. He was pleased to note the distinction made between special missions of a representative and temporary character and a permanent specialized mission with a specific sphere of competence which could exist side by side with the regular permanent

diplomatic mission. The developing nations had noted the increasing practice of developed countries to swell the number of their nationals in their permanent diplomatic missions under the umbrella of permanent specialized missions—a practice that was not reciprocal. The proposition in article 7 that a State might send a special mission to a State or receive one from a State which it did not recognize appeared to belong to the realm of the progressive development of international law.

24. Nigeria had reservations about its terms, which it would discuss at the appropriate time. Generally speaking, his delegation approved of the principles embodied in the draft articles but would reserve its position respecting the extent of the privileges and immunities to be granted to special missions. It recognized the usefulness of special missions but felt that the privileges and immunities afforded them should be the minimum necessary to allow them to perform their tasks without needless restrictions.

25. On the subject of chapter III of the Commission's report, his delegation was pleased to note the prominence given to the topic of succession of States and Governments in the organization of the Commission's future work and approved of the decision to appoint separate rapporteurs to deal with each main heading. It also welcomed the decision to set aside smaller topics for discussion at times when the broader topics could not be pursued. In that connexion he recalled the request made by his and several other delegations for urgent consideration of the most-favoured-nation clause and was gratified to note the Commission's unanimous decision to take up the question in 1968. He hoped that the Commission would be able to submit draft articles on the subject before the diplomatic conference on the law of treaties was held.

26. Another welcome development was that the Seminar on International Law had now become an institution. Nigeria congratulated the members of the Commission who had participated in sessions of the Seminar and expressed appreciation to the Governments which, by their generosity, had made it possible for an increasing number of participants, especially from developing countries, to attend. The seeds of better appreciation of international law planted at those sessions were already sprouting all over the world.

27. Mr. SMEJKAL (Czechoslovakia) said that in recent years striking progress had been made in the field of diplomatic law. The preparation of final draft articles on special missions suggested that the codification of all diplomatic law might not be too distant a goal. The final draft articles and the draft preamble which had been prepared in the spirit of the earlier Conventions on Diplomatic and Consular Relations reflected the present state and requirements of international relations. The draft articles took fully into account the fact that the purpose of privileges and immunities was not to benefit individuals but to ensure the effective accomplishment of the functions of special missions as representatives of States.

28. The basic conception of the draft articles had been the subject of lengthy consideration. During the

preparation of the draft articles his delegation had been attracted by the idea of distinguishing between political missions and so-called technical missions and according privileges and immunities in line with the distinction drawn. However, after reconsidering the whole problem and analysing that distinction in the context of the real requirements of co-operation among States, his delegation now fully accepted the conception of the final draft articles. It considered that the International Law Commission, by adopting articles 1 (a), 2 and 3, had succeeded in principle in overcoming all possible objections; like the delegation of Iraq, it construed the expression "representative character" in the widest sense. It had been compelled to admit that the theoretically attractive idea of a distinction between political missions and so-called technical missions would lead in practice to an impasse, because in modern international life it was extremely difficult to separate the technical and the political, especially in a general provision.

29. While the approach to the question of privileges and immunities adopted in the draft articles was based substantially on the 1961 Vienna Convention on Diplomatic Relations, some of the draft articles were taken from the 1963 Vienna Convention on Consular Relations. His delegation had no reservations about incorporating in the draft articles the conception of the Convention on Diplomatic Relations but thought that it might be advisable to consider carefully whether there really were special conditions which required the introduction of ideas from the Convention on Consular Relations, for instance, in the last sentence of article 25, paragraph 1. Those draft articles which were not based on either Convention should be examined with great care: one such provision was article 50, paragraph 2 (c), concerning an agreement among two or more States to reduce reciprocally the extent of the facilities, privileges and immunities of their special missions, which, aside from the practical problems to which it might give rise, had in his delegation's view so wide a scope as to endanger the general standard.

30. His delegation fully approved of the preparation of the draft articles in the form of an entirely separate and autonomous convention, although it was a sort of protocol to the Convention on Diplomatic Relations.

31. He wished to commend Mr. Bartoš, the Special Rapporteur on special missions, and all the members of the International Law Commission for having produced a document which was in the interests of the community of nations and would serve to promote co-operation among States.

32. His delegation suggested that the draft articles on special missions should be placed on the agenda of the Sixth Committee with a view to the preparation and adoption of a convention. In support of that sug-

gestion, he pointed out that the conference schedule was overburdened, that the type and contents of the proposed convention made it a particularly suitable subject for the experiment of preparation in the Sixth Committee, and that the organization of a conference would entail heavy expenditures.

33. The International Law Commission's decision to continue to deal with the topic of succession of States and Governments under three main headings and to entrust that topic to more than one special rapporteur was very wise, and the three headings had been well chosen.

34. His delegation was gratified that the International Law Commission had decided to place on its programme the topic of most-favoured-nation clauses in the law of treaties and to appoint Mr. Endre Ustor as Special Rapporteur on that topic, thus ensuring a profound analysis of a subject which had great practical significance. The clarification of the legal aspects of that topic would undoubtedly be of assistance to the United Nations Commission on International Trade Law.

35. His delegation favoured in principle the view that the International Law Commission should concentrate on the topics already under study and advance the work on them as rapidly as possible, without of course in any way ruling out the possibility of including a new topic in the Commission's programme, even on a priority basis, if the greater interest of States so required.

36. He expressed his satisfaction at the high level of the lectures given at the Seminar on International Law during its third session, and the fact that two of those lectures had been given by representatives of socialist legal systems; he hoped that all legal systems would continue to be represented among the lecturers.

37. His delegation was particularly gratified that nationals from the developing countries had participated in the Seminar since that would not only assist them and their countries but would also promote international co-operation.

38. In conclusion, he expressed his delegation's desire and readiness to participate in the work of the International Law Commission, whose place in practical international affairs was assured by its recent progressive work.

39. Mr. TEMBOURY (Spain) thanked the Committee for the tribute it had paid to the memory of Mr. de Luna, whose death had been an irreparable loss to his delegation, his country and the cause of the rule of law in international relations. He would convey the condolences of the members of the Sixth Committee to his Government and to Mr. de Luna's family.

The meeting rose at 12 noon.