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Chairman: Mr. Edvard HAMBRO (Norway).

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. MUTUALE (Democratic Republic of the Congo) said that, having had an opportunity to observe the work of the International Law Commission at Geneva, he had been able to see the extreme care with which the members of that body had drafted each part of the draft articles on special missions (A/6709/Rev.1 and Corr.1, chap. II). His delegation would like to pay a special tribute to the competence of the Special Rapporteur for the topic.

2. International juridical norms, which included the rules relating to special missions, could only develop from the harmonious will of States. That will was expressed both in existing international legal instruments, in particular the Charter of the United Nations, and in the practice of States. In order to consider the provisions of the draft articles, therefore, reference must be made to both those elements. Moreover, realism itself, recommended by the representative of Brazil, demanded that for such a draft, which should promote harmony and concord in international relations, attention should be directed towards the basic principles which had already been agreed upon by almost all States.

3. Looked at from that angle the proposed text seemed all the more worthy of approval in that it would help to promote and give concrete expression to the ideals of the Charter. Furthermore, it should be brought into line with the 1961 Vienna Convention on Diplomatic Relations^{1/} and the 1963 Vienna Convention on Consular Relations^{2/} which related to similar situations and reflected universal practice.

4. In addition, the fact that the draft rules were not peremptory, as Mr. Yasseen had pointed out (958th

meeting), should make them more acceptable by dispelling apprehensions about sovereignty and the fears of States that their interests of all kinds might be jeopardized. Admittedly, for the developing countries a peremptory international law would provide more secure protection against the constraints which more fortunate States might try to impose upon them in the formulation of bilateral agreements, but in the circumstances the International Law Commission could not be blamed for not having specifically proposed some rules, based on past practice, which would be *jus cogens*; the most important thing was to provide a realistic point of departure for something which would subsequently be developed.

5. With regard to the procedure for concluding a convention on special missions, his delegation, which was on the whole quite satisfied with the draft and thought it inadvisable to postpone the solution of the problems posed by a form of diplomacy which was becoming more and more prevalent, would favour the proposal which would advance the date of the conclusion of a convention.

6. Lastly, his delegation wished to thank the Governments which, by granting fellowships to young specialists from the developing countries, had contributed to the success of the third session of the Seminar on International Law held at Geneva.

7. Mr. GONZALEZ GALVEZ (Mexico) said that, in considering the report of the International Law Commission on the work of its nineteenth session, he wished to reaffirm the importance that his delegation attached to the work of the Commission and the need to avoid referring to the Commission issues whose political implications might endanger the accomplishment of its task. His delegation hoped that, after it had considered the questions relating to the succession of States and Governments, state responsibility, the most-favoured-nation clause, and relations between States and inter-governmental organizations, the International Law Commission would consider taking up the legal problem relating to the utilization and use of international rivers, a topic on which it could take into consideration the opinion adopted several years previously by the Inter-American Juridical Committee, and studying model rules for conciliation which might lead to the improvement of some of the methods for the pacific settlement of disputes.

8. Recalling operative paragraph 2 of General Assembly resolution 375 (IV) of 6 December 1949 concerning the draft Declaration on Rights and Duties of States, he observed that his Government, ever since Dumbarton Oaks, had deplored the fact that the Charter, then in draft form, had not had a special chapter

^{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.

defining those rights and duties.^{3/} He suggested that the International Law Commission might study the possibility of revising the draft Declaration, after it had completed its examination of priority issues, or in the intervals between its work; failing that, the General Assembly should decide to take up the issue again.

9. With regard to the other activities of the International Law Commission, his delegation was glad that contact had been maintained with regional legal bodies and that the third session of the Seminar on International Law at Geneva, which a young Mexican official had attended, had been so successful.

10. While it had not had time to study thoroughly the draft articles on special missions (A/6709/Rev.1 and Corr.1, chap. II), his delegation considered that they were in the main acceptable. It was doubtful about certain points, for example the advisability of retaining article 4 relating to the sending of a mission to two or more States, since the text was based on political considerations, as was clear from the commentary on it, and the situation referred to would be regulated, from the legal point of view, by the provisions of article 2, which made consent an indispensable condition for the sending of a special mission. It also had doubts about the need to establish a difference for special missions between a person declared *nongrata* and a person not acceptable; the possible interpretation of certain articles relating to the facilities, privileges and immunities to which special missions were entitled; and the limitation, in the cases covered in part II of the draft articles, of the power to restrict the scope of privileges by agreement between the parties.

11. With regard to the procedure for the formulation of the proposed convention, his delegation hoped that that task would be entrusted to the Sixth Committee, which could start its work at the very beginning of the twenty-third session or if necessary at the twenty-fourth session of the General Assembly. The difficulties to which the United Kingdom representative had drawn attention at the previous meeting should certainly be taken into consideration, but they were not insurmountable, as had been shown by the conclusion of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies (General Assembly resolution 2222 (XXI), annex). There was another possibility, namely that the Committee might recommend that the General Assembly should establish a preparatory committee, chosen in accordance with the principle of equitable geographical distribution, to work out a preliminary draft, taking into account any comments submitted by Member States. The Committee could hold a session of about three weeks, starting on 2 September 1968, and its preliminary draft could serve as a basis for an analysis of the problem to be made by the Sixth Committee at either the twenty-third or the twenty-fourth session of the General Assembly.

12. Mr. NACHABE (Syria) said that his country took the greatest interest in the efforts that were being

made in the matter of the progressive development and codification of international law and had been glad to see that the report of the International Law Commission for the present year was once again mainly concerned with another subject of diplomatic law, namely, the question of special missions. The work of the International Law Commission, and in particular that of Sir Humphrey Waldock, its President, and Mr. Milan Bartoš, its Special Rapporteur for that topic, deserved the highest praise and would enrich international law with another valuable source of written convention law, to which the small States attached primary importance.

13. At the twenty-first session the Syrian delegation had expressed its appreciation of the wise recommendations which the International Law Commission had made to the Special Rapporteur concerning the nature of the provisions relating to special missions, the distinction to be made between the different kinds of special missions and the inclusion in the draft of an introductory article simplifying and condensing the text. It was glad to note that the draft which had been finally adopted took those recommendations into account and included an annex giving a draft preamble similar to that preceding the Vienna Conventions of 1961 and 1963.

14. The draft articles on special missions provided, on the whole, an acceptable basis for the conclusion of a convention on the matter. It was particularly satisfactory that articles 9 and 10 of the 1965 draft,^{4/} concerning precedence, had been deleted and replaced in the present draft by article 16, the Commission having rightly considered that the provisions of the draft concerning precedence should be incorporated in one single article.

15. The Commission had also done well to amend the text of paragraph 1 of article 16 of the 1965 draft, relating to the activities of special missions on the territory of a third State; that paragraph had provided that special missions from two or more States could meet on the territory of a third State after obtaining the express consent of that State, but had made no reference to the right of the third State to withdraw its consent. The text of article 18 of the present draft specifically affirmed that right, thus removing any possible misunderstanding in that connexion.

16. With regard to the facilities, privileges and immunities to be accorded to special missions, the Syrian delegation considered that they should be limited to what was strictly necessary for the normal performance of a special mission's task. It was with that in mind that it had approved the restrictive provisions introduced into paragraph 2 (d) of article 31 on immunity from jurisdiction and into paragraph 4 of article 43 on transit through the territory of a third State.

17. His delegation shared the doubts of several members of the International Law Commission, however, regarding the last sentence of paragraph 1 of article 25 concerning inviolability of the premises, which provided that the consent of the head of the

^{3/} See Documents of the United Nations Conference on International Organization, G/7 (c) (vol. III, pp. 64 and 65).

^{4/} See Official Records of the General Assembly, Twentieth Session, Supplement No. 9, chap. III, pp. 19-23.

special mission or, if appropriate, of the head of the permanent diplomatic mission of the sending State could be assumed, in order to allow the agents of the receiving State to enter the premises of the special mission, in case of fire or other disaster requiring prompt protective action. Such a provision was liable to give rise to abuse.

18. With regard to the advisability of convening an international conference to adopt a convention on the subject, it would seem wiser, in view of the heavy programme of international conferences for 1968 and 1969, to have that convention drawn up at the forthcoming sessions of the General Assembly.

19. The Syrian delegation supported the other decisions and conclusions of the International Law Commission, appearing in chapter III of the report. The Commission had done well to entrust the topic of the succession of States and Governments to more than one special rapporteur, in order to advance its study. It was also satisfactory to note that the International Law Commission would have the opportunity, at its twenty-first session, of considering a detailed report on the important question of State responsibility and that it had decided to place on its programme of work the topic of most-favoured-nation clauses in the law of treaties.

20. Lastly, the Syrian delegation was glad to see that the International Law Commission had developed its contacts with the legal bodies of various continents and that it had been successfully continuing since 1965 the organization of sessions of the Seminar on International Law that had been held on the initiative of the United Nations Office at Geneva.

21. Mr. RAWN (Pakistan) said that, on the topic of special missions, the International Law Commission had drawn up a most valuable draft, in a new field, which was more in the nature of an attempt at the progressive development of international law than a codification of existing rules and practices. The practice of States in the matter of special missions had taken such a variety of forms that the Commission could not have done other than create a model.

22. The International Law Commission had defined a special mission as one of a representative and temporary character, sent by one State to another State to deal with that State on specific questions or to perform in relation to the latter State a specific task. That definition therefore excluded special missions of a permanent or undetermined duration, missions not of a representative character, whether they were missions sent by insurgent Governments or governmental bodies within a State, special envoys and Heads of State and Cabinet Ministers on special assignments to other States. The Commission had done well to delimit the subject of *ad hoc* diplomacy and to try to standardize the practice, but it should take up the study of other related fields of *ad hoc* diplomacy as soon as possible.

23. The privileges and immunities granted in articles 24 to 47 of the draft were largely analogous to the privileges and immunities accorded to diplomatic missions in the 1961 Vienna Convention on Diplomatic Relations. The differences of substance between that Convention and the draft articles were justifiable in

the light of the fact that special missions had a specific purpose and were temporary. His delegation felt that the International Law Commission had been right to suggest the same standard of privileges and immunities for special missions as existed for diplomatic missions under the Vienna Convention of 1961, for when a special mission had a representative character it was the political arm of a sovereign State in the same way as a diplomatic mission and should therefore be granted the same privileges and immunities. His delegation also noted with satisfaction the recognition in article 42 of the principle that privileges and immunities granted to special missions were only for the effective performance of their functions and that the sending State should waive such immunity in respect of civil claims when that could be done without impeding the performance of the functions of the special mission. The recognition of that principle was essential in order to avoid the abuse of privileges and immunities.

24. His delegation praised the Special Rapporteur for having included in the draft article 7 concerning the non-existence of diplomatic or consular relations and non-recognition. That article stated that the existence of diplomatic or consular relations was not necessary for the sending or reception of a special mission, and that a State might send a special mission to a State, or receive one from a State, which it did not recognize. In the divided world of today, in which recognition had become a highly political act, the article's provisions might provide an intermediate position between non-recognition and recognition accompanied by full diplomatic intercourse. However, the very acceptance by the receiving State of a special mission—which by definition was representative of the sending State—implied a measure of recognition of the statehood of the other party. His delegation had noted that article 7 did not cover the case where a State was recognized but the government in *de facto* control of the State was not recognized. It felt that it should be possible in such cases also to send or receive a special mission and suggested that a provision to that effect should be added to article 7.

25. Regarding the procedure to be followed, his delegation thought that the best method would be to conclude a convention at the twenty-third session of the General Assembly; that procedure would avoid extra expenditure and save time, in view of the fact that it might not be possible to convene a conference for that purpose until 1970.

26. In conclusion, he welcomed the International Law Commission's decision to give priority to the question of succession of States in respect of treaties and to study simultaneously the topic of the most-favoured-nation clause, both subjects having become urgent in view of the convening in 1968 and 1969 of the international conference on the law of treaties. He hoped that the sessions of the Seminar on International Law would be continued and developed in the future, as they contributed greatly to the better understanding of international law.

27. Mr. MUSA (Somalia) said there was no doubt that the International Law Commission's work on special missions could provide an excellent basis for the

Sixth Committee's deliberations aimed at the conclusion of a convention on the subject.

28. The observations of the representative of Somalia would concern principally articles 1, 2, 3, 4, 21, 22, 25, 26, 28, 29, 31, 33, 35, 36, 37, 42 and 50 of the draft which he regarded as constituting the backbone of the Commission's work on special missions and, therefore, such observations would be made of the appropriate stage.

29. Somalia, aware of the difficulties of formulating the precise status of a special mission, had come to the conclusion—which, indeed, draft articles 2, 3, and 4 recognized in the spirit and the letter—that the answer lay in the conclusion of agreements between the sending and receiving States regarding the facilities, privileges and immunities to be accorded to the special mission. However, in the absence of agreements on that subject between Somalia and many sending States, the National Assembly of the Somali Republic had on 27 June 1967 adopted Law No. 16, ratifying the two Vienna Conventions and empowering the Minister for Foreign Affairs to accord the widest possible privileges and immunities to the members of special missions, on the basis of the 1961 Vienna Convention on Diplomatic Relations. In the exercise of that discretionary power, the Minister for Foreign Affairs would obviously have to take into consideration not only the existing agreements between the Somali Republic and the sending State but also the conditions necessary for the performance of each special mission's function—a point covered in draft article 22.

30. Because of the existence of the law to which he had referred, the proposed convention on special missions was superfluous as far as Somalia was concerned. His delegation would, however, participate in the endeavour aimed at the conclusion of that convention, since it would amount to a rich source of guidelines for State practice and a useful contribution to the codification and progressive development of international law.

31. With regard to the procedure to be followed, his delegation thought that the elaboration of the convention would be better dealt with in the Sixth Committee than at a conference of plenipotentiaries because of the financial and technical implications of convening such a conference and also because that procedure would enable the convention to be concluded as early as 1968, whereas if a conference had to be convened the convention might not be concluded before 1970 or even later.

32. Mr. TINOCO (Costa Rica) said that the practice of States with regard to special missions was tending to become more uniform and should be expressed in a convention which would allow progress to be made towards the codification of international law in that field. The draft articles before the Committee had dispelled his Government's apprehensions about the excessive vagueness of the previous draft on certain points.

33. Three basic ideas emerged from the present draft: first, the proposed rules would apply solely to missions sent by States to other States, and would not include missions sent by or to political groups; the wording of article 7, however, still caused some misgivings, as its provisions could apply to insurrectionist, segregationist or separatist movements seeking to create a new State. Secondly, the rules would govern temporary missions, since they were intended to apply to diplomatic missions sent "to deal ... on specific questions" or "to perform ... a specific task". Lastly, the rules would apply only to missions that could be regarded in good faith as representative of a State, and would exclude so-called "lower-level" missions, thus removing the danger of undue extension of the privileges and immunities accorded to special missions in fiscal matters, particularly with regard to custom duties.

34. Regarding the form that the draft articles should take, his delegation thought it best that they should constitute a separate convention. It hoped that the preparation of the convention would be entrusted to the Sixth Committee which would carry out the task in 1969, so as to give States sufficient time to submit their observations.

35. 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".

36. His delegation endorsed the International Law Commission's recommendations regarding the organization of its future work and was confident that the Commission would take up as soon as possible the study of the right of asylum, both diplomatic and territorial—a subject which the General Assembly had referred to it by resolution 1400 (XIV) of 29 November 1959 and which was becoming increasingly important in connexion with the protection of human rights.

The meeting rose at 11.50 a.m.