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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, A/C.6/L.617)

1. Mr. EL-ERIAN (United Arab Republic) noted that the report of the International Law Commission (A/6709/Rev.1 and Corr.1) covered the work of the Commission's first session with its new membership. Circumstances prevailing at the time had also caused it to be described as a "disturbed" session (957th meeting). Thanks to the guidance of its Chairman, however, the Commission had been able to complete its draft articles on special missions, to consolidate its immediate programme of work and to lay solid foundations for its future methods of work and programme of activities.

2. His delegation wished merely to make a few general comments on the scope of the draft articles (A/6709/Rev.1 and Corr.1, chap. II), their general economy and the form of instrument in which to embody them. The Commission had been wise to confine its text to missions of a representative character. By avoiding the somewhat arbitrary distinctions between political and technical missions and between ordinary and high-level missions, it had succeeded in producing a general and flexible draft, containing standard provisions applicable in principle to all special missions. In the interests of uniformity and facility of interpretation, the Commission had also been right to model the draft articles on special missions upon the provisions of the 1961 Vienna Convention on Diplomatic Relations.^{1/} However, his delegation was pleased to note that the Commission had not stated the rules for special missions simply by cross-reference to the relevant provisions of that Convention but had proposed the draft articles as an independent instrument. His delegation shared the general view that the Assembly should accept the Commission's recommendation, in paragraph 33 of its report, that appropriate measures should be taken for the conclusion of a convention on the subject.

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

3. The United Arab Republic had no definite views as to the appropriate procedure for the adoption of such a convention. A strong case had been made for the convening of a special conference, but on the whole his delegation thought that, in view of various practical and financial considerations, the Sixth Committee would provide a better forum. The assignment to it of such a task would also be a useful means of revitalizing the Sixth Committee, which in the early days of the United Nations had played a far more active role in the framing of basic legal instruments.

4. With regard to the organization of the Commission's future work, he was glad to note that the Commission had responded promptly to the Sixth Committee's recommendation that priority should be given to the topic of succession of States and Governments in respect of treaties and to the subject of most-favoured-nation clauses in the law of treaties.

5. Concerning the review of the Commission's programme and methods of work, he recalled that a similar review at the tenth session of the Commission had led the Sixth Committee to include in its agenda an item on future work in the field of codification and progressive development of international law. He hoped that the review to be undertaken at the Commission's next session would stimulate similar activity in the Sixth Committee.

6. The United Arab Republic attached considerable importance to the relationship between the work of the International Law Commission and other United Nations organs dealing with the development of international law. In the case of topics that were not yet ready for codification, the Sixth Committee, for example, could lay down general principles for their subsequent codification by the Commission.

7. In view of the importance of co-operation in the field of international law, he was glad to know that the three regional bodies that had sent observers to the sessions of the Commission continued to do so. Now that the sessions of the Seminar on International Law had proved so successful, he thought that the time had come to consider establishing them as a permanent institution on the basis of more stable financial arrangements. Lastly, he welcomed the presence in the Sixth Committee of Members of the International Court of Justice, which had an important role to play in the development of international law.

8. Mr. RUDA (Argentina) paid a tribute to the calm and constructive work accomplished by the International Law Commission—one of the few international bodies that was not affected by the political tensions and conflict besetting the contemporary world. Its task had not been easy, and in the course of its twenty

years of existence it had had to tackle a number of difficult legal problems. Nevertheless, it was making substantial progress towards its goal of codifying international law. The key to the Commission's success undoubtedly lay in the topics it had considered in recent years. Since it had been able to set aside more controversial issues and concentrate on items of major relevance to international law, it had been able to make a substantial contribution to jurisprudence by preparing a series of conventions and studies. His delegation therefore felt that, as in previous years, the Sixth Committee should adhere to its policy of referring major, non-controversial topics to the Commission.

9. His delegation was not ready to comment in detail on the draft articles on special missions. However, the Argentine Government favoured the adoption of a convention on the subject to supplement the 1961 Vienna Convention on Diplomatic Relations. The draft articles were a very important development, in view of the recent growth in special missions and the increasing tendency to employ special, rather than permanent, missions for the conduct of diplomatic negotiations. The importance of that new trend in international diplomatic practice had, he felt, a considerable bearing on the way in which the subject should be dealt with by the Sixth Committee.

10. Some delegations considered that the Committee itself should take up the item at the twenty-first session of the Assembly, while others favoured the convening of a special conference. Both courses seemed to provide a legitimate means of obtaining the desired goal of concluding a convention on special missions. However, since Governments had not yet had sufficient time to study the draft articles, he hoped that a decision regarding the forum could be postponed until the next session of the General Assembly. Such a solution would have the added advantage of providing an opportunity for a general debate on the topic, in the event that it was decided to hold a conference. The view of his own delegation was that the Sixth Committee would be a more economical forum but that a special conference, attended by specialists with a thorough knowledge of the field, would be able to deal with the topic in greater depth. It should also be borne in mind that the 1961 Vienna Convention, which the draft articles supplemented, had been adopted at a diplomatic conference. Such a conference would also allow wider representation than the Sixth Committee.

11. His delegation approved of the priorities established by the Commission with respect to its programme of future work. Although it regretted the departure of the Special Rapporteur on succession of States and Governments, as a result of which the topic had had to be divided into three separate headings, Argentina's main concern was that consideration of that important subject should be concluded within the term of the present Commission, so that it would be possible to say that each Commission had completed the study of one of the major topics of contemporary international law.

12. Argentina attached particular importance to the study of the most-favoured-nation clause. That clause was essential to the foreign trade of many developing countries, and it raised certain crucial legal problems

in connexion with their participation in broader economic associations, such as common markets. The study of that type of clause was particularly important to the countries of Latin America, which were anxious to establish a common market to accelerate their economic integration.

13. His delegation thought it very timely that the Commission should have decided to review its programme and methods of work at its twentieth session. It was also pleased to note that the Commission was maintaining its co-operation with various regional bodies, and especially with the Inter-American Juridical Committee, which had now become the main juridical organ of the Organization of American States.

14. Argentina also welcomed the recommendation of the Commission concerning the publication by the Secretary-General of the revised editions of the Handbook of Final Clauses^{2/} and the Summary of Practice of the Secretary-General as Depositary of Multilateral Agreements.^{3/} Both of those documents were extremely useful to Governments.

15. Mr. MONTENEGRO MEDRANO (Nicaragua) commended the members of the International Law Commission for their useful report. The draft articles on special missions were important for the codification and progressive development of international law and were of inestimable value for Latin American, and particularly Central American, countries, where the trend towards integration had been accompanied by a proliferation of special missions. His delegation approved of the draft articles as a whole and believed that it was necessary to give special missions the immunities and privileges indicated in the draft. The latter provided a good basis for a convention, and his delegation could not agree with those who felt that work on a convention could be postponed indefinitely. Years had been spent on the preparation of the draft articles, and his delegation urged that they should be approved as soon as possible.

16. Mr. DE BRESSON (France) said that his delegation favoured in principle the definition and codification of the law applicable to special missions; for ad hoc diplomacy had acquired such importance in international relations that it would be regrettable if a precise set of rules was not adopted to regulate it. In helping to supply that omission, the Sixth Committee was carrying out its role in the progressive development of international law.

17. The objective, which was clear and limited, was to enable special missions to carry out their tasks with maximum efficiency, by obtaining from the host State the facilities required for that purpose. Such an undertaking, praiseworthy though it was, involved serious obstacles. It was questionable whether a simple transportation of diplomatic law, as expressed in the 1961 Vienna Convention, was really feasible. One of the main elements on which diplomatic privileges and immunities were based was the stability of

^{2/} ST/LEG/6, prepared by the Treaty Section of the Office of Legal Affairs, 5 August 1957.

^{3/} ST/LEG/7, prepared by the Treaty Section of the Office of Legal Affairs, 7 August 1959.

the mission 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. Furthermore, the notion of official activity was difficult to define precisely, and it was not at all easy to distinguish between the "official presence" and the "private presence" of the members of a special mission. In addition, administration of the privileges and immunities granted could become a burden for the host State, owing to the increasing number of such missions.

18. The International Law Commission had, of course, endeavoured to take those difficulties into account, but his delegation was not wholly convinced that it had found satisfactory solutions in every case. For example, it had misgivings regarding article 17, concerning the seat of the Special Mission, since the very concept of a seat postulated a permanence which could hardly be attributed to special missions. It also had misgivings regarding article 24 on exemption of the premises of the special mission from taxation and article 25 on inviolability of the premises, since it was difficult to see how they could be applied in practice. In addition article 30 on inviolability of the private accommodation seemed to go too far, since under its terms it would be applicable even to a hotel room used briefly by a member of a special mission. Article 33 on exemption from dues and taxes seemed likely to give rise to serious difficulties in practice. Again, 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 they should be extended to their families. Furthermore he questioned whether the principle of non-discrimination, as laid down in draft article 50, was valid in the case of special missions; the variety of purposes for which special missions were constituted might well justify differences in the treatment accorded to them.

19. In view of the great complexity of the problems involved, all aspects of the matter should be studied with great care by the national technical services responsible for their application, and they should be the subject of consultations between Governments at the diplomatic level.

20. Because of the considerable amount of preparatory work which remained to be done, it would be premature for the Sixth Committee to undertake to approve the draft articles and submit them to the General Assembly for adoption. Such hasty action would create more problems than it would solve. His delegation therefore hoped that the draft would be referred to an intergovernmental conference for study.

21. His delegation welcomed the International Law Commission's efforts to advance the codification of international law, but it would wish in due course to express its views on certain items in the Commission's programme of work which went beyond that objective, such as the question of relations between States and intergovernmental organizations.

22. In conclusion, he expressed his delegation's satisfaction with the work of the Seminar on Inter-

national Law, the third session of which had been held in 1967.

23. Mr. JACOVIDES (Cyprus) said that the report of the International Law Commission furnished yet another example of the Commission's successful discharge of its function with respect to the codification and progressive development of international law. His delegation found the draft articles on special missions a useful basis for discussion, particularly as many of the problems arising in connexion with them had been fully discussed on the occasion of the adoption of earlier codification projects. It also endorsed the Commission's position that only temporary missions sent to deal with specific questions or perform specific tasks should come within the scope of the term "special missions" and that, within those limits, it was immaterial whether the object of such a mission was political, technical, economic, cultural or scientific. It shared the view that the term should be qualified by the phrase "of a representative character". It welcomed the emphasis, throughout the draft articles, on the element of consent on the part of the receiving State. The facilities, privileges and immunities to be enjoyed by special missions should not be excessive, but should be limited to those essential for the proper performance of the mission's functions. That element should be very carefully circumscribed, particularly as special missions might be sent and received by States which did not maintain diplomatic relations with each other, and even by States which did not recognize each other.

24. With regard to the steps to be taken for the conclusion of a convention on special missions, the controversy on that subject must not be allowed to overshadow the general agreement that such a convention should be concluded as a significant step in the process of codifications and progressive development of international law. The momentum gained should not be lost, and effective steps should be taken to bring to a successful conclusion the efforts which had been made over so many years, but with due regard to the quality of the final results.

25. With respect to chapter III of the report, his delegation noted with satisfaction that the Commission had given high priority, in its programme of future work, to the topic of succession of States and Governments. It hoped that more progress would be made on the topic of State responsibility and that the Special Rapporteur would be able to present a substantive report not later than the twenty-first session of the Commission, and it trusted that both Mr. El-Erian's report on relations between States and intergovernmental organizations and his forthcoming report containing a full set of draft articles on the privileges and immunities of representatives of States to intergovernmental organizations would be fully discussed by the Commission in 1968. It welcomed the appointment of Mr. Ustor as Special Rapporteur on the topic of most-favoured-nation clauses.

26. It was gratifying to note that the International Law Commission had continued to maintain close cooperation with the regional bodies concerned with the codification of international law. Since international law was, by definition, universal in nature, it was of

the utmost importance to co-ordinate parallel efforts in that field.

27. He expressed his delegation's satisfaction at the holding of another session of the Seminar on International Law, which he hoped would become a permanent institution with maximum participation of students from countries which needed it most.

28. Mr. GONZALEZ GALVEZ (Mexico), referring to the suggestion he had made at the 961st meeting concerning the procedure for the formulation of a convention on special missions, said that what he had had in mind might take the form of a draft resolution, consisting of three operative paragraphs. The first paragraph would invite Member States to submit their comments on, and amendments to, the draft articles

not later than 1 July 1968. In the second paragraph, the General Assembly would decide that consideration of the draft articles should be completed at its twenty-third session, with a view to the adoption of an international convention on the subject. In the third paragraph, the Assembly would decide that a preparatory committee, composed of twenty-one Member States, with equitable geographical representation, and of any other States which expressed their interest in participating before 1 July 1968, should be established to consider at a three-week session, beginning on 2 September 1968, the comments and amendments which had been submitted, and to prepare revised draft articles on special missions.

The meeting rose at 4.40 p.m.