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CONTENTS

	Page
<i>Agenda item 85:</i>	
<i>Report of the International Law Commission on the work of its nineteenth session (continued)</i>	11
<i>Organization of work of the Committee</i>	12

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. NAINA MARIKKAR (Ceylon) said that the draft articles on special missions prepared by the International Law Commission (A/6709/Rev.1 and Corr.1, chap. II) would provide Governments with an excellent basis for their final deliberations regarding the codification of that branch of the law. While his delegation was in general agreement with the principles embodied in the draft articles, there were some aspects which called for comment.

2. First, his Government shared the apprehension of many others regarding the too close assimilation of special missions to permanent diplomatic missions, especially if it would call for an undue extension of privileges and immunities. In particular, it would be preferable to adopt in article 31 the conservative approach reflected in the wording of article 22, under which the receiving State need accord only such facilities as were required for the performance of the special mission's function, "having regard to [its] nature and task". Again, although it might be regarded as self-evident that States could, by common agreement, widen or impose further restrictions on the privileges and immunities to be accorded to a particular special mission, it might be useful if that element of flexibility was given greater emphasis.

3. Secondly, an attempt should be made, in the preparation of the final version of the draft articles, to make them more concise and to convey identical meanings by the uniform use of terms, avoiding duplications which might be misleading. In that connexion, he pointed out that the first idea conveyed in article 2, which referred to the "specific task" of special missions, was already comprehended in the definition of such missions in article 1 (a), while the second idea, the "consent" of the receiving State, appeared to be reintroduced, even though indirectly, in articles 4 and 5, which referred to refusals to receive special missions or objections to the sending of such missions. The solution might lie in including

a definition of the term "receiving State" in the draft. It should be possible to consolidate the provisions on the essentials of "consent" to the reception of a special mission with those on "mutual consent" as to the missions's field of activity (art. 3). It was not clear why the term "agreement" and its variants (art. 6) had been felt to be inappropriate in the context of articles 2 and 3 when they had been used freely elsewhere in the draft.

4. His Government was satisfied with the provisions of article 7, which declared that the existence of diplomatic or consular relations was not necessary for the sending of a special mission, but it considered paragraph 2 of the Commission's commentary on that article to be unduly restrictive. It might be desirable to include in article 7, in the final version of the draft, a third paragraph reading as follows:

"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."

5. His delegation was gratified that the Commission had decided to give priority to the study of succession of States and Governments in respect of treaties and had appointed Sir Humphrey Waldock Special Rapporteur on that topic. It was his delegation's understanding that the studies and proposals for the development and codification of that branch of the law would also cover the changes in treaty relations which occurred when a hitherto subject nation regained full responsibility for the control of its international affairs.

6. His delegation looked forward to the results of the Commission's work in the field of State responsibility. Because of the rapid increase in international commercial dealings, the increasing role of economic aid and the growing volume of private investment in the developing countries, the number of foreign personnel in those countries had risen sharply. A State's obligations towards such aliens, no less than the obligations of those aliens towards the host country, needed to be defined for their mutual benefit, as well as in the interests of the maintenance of friendly relations between the host State and the State of which the alien was a national.

7. Recent developments had already shaken the foundations of the traditional view that States alone were capable of possessing rights and duties under international law. While it was still true that individuals might possess such rights and duties 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 at the Hague in 1962 with its Rules of Arbitration and Conciliation for Settlement of International Disputes between Two Parties of Which Only One is a State, and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States,^{1/} which had come into effect in October 1966. The Convention was of great significance in the development of the law relating to State responsibility, and his delegation hoped that the Commission would make a special study of the legal relationships arising in its operation.

8. Mr. KOZHEVNIKOV (Union of Soviet Socialist Republics) said that the Union of Soviet Socialist Republics attached great importance to the codification and progressive development of international law and had taken active part in the efforts made to attain those goals, particularly with regard to foreign relations. In that connexion, the legislation of 23 May 1966 reflected not only the principles of Soviet doctrine, but also the fundamental principles of the Vienna Convention on Diplomatic Relations of 1961.

9. His delegation was glad to note that the International Law Commission had successfully carried out its task with regard to the draft articles on special missions. The draft, submitted only one year after the draft articles on the law of treaties, could serve as a basis for the preparation of a new convention, and it had the further merit of contributing to the codification and progressive development of international law. It was not, of course, the Commission's function to establish rules of law; only States had that right, and the Commission should merely try to find the best formulation for trends accepted by States. He welcomed the precise definition of a special mission provided by the Commission, which brought out the three main criteria for such a mission, namely, its representative character, its duration, and the special nature of its function. He noted that in some respects the Commission had improved upon the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations. For example, article 43, paragraphs 3 and 4, which provided that the third State must be informed in advance of the transit of members of the special mission, were an improvement over article 40, paragraph 3, of the 1961 Vienna Convention on Diplomatic Relations,^{2/} which contains no similar provision. On the other hand, it was regrettable that the last sentence of paragraph 1 of draft article 25 only reproduced outright the last sentence of paragraph 2 of article 31 of the 1963 Convention on Consular Relations.^{3/} The principle of the inviolability of the premises of the mission, which was of particular importance in the case of special

missions, should not be weakened in the draft articles, and his delegation therefore believed that the sentence should be deleted.

10. In view of the nature of the problems to be considered, the cost of holding an international conference and the crowded calendar of conferences, his delegation had reached the conclusion that it would be inadvisable to convene a conference for the purpose of concluding a convention on special missions. The General Assembly had itself adopted and opened for signature by States such very important conventions as the International Covenants on Human Rights (General Assembly resolution 2200 (XXI)), and he suggested that a similar procedure should be followed in the case of special missions.

11. In conclusion, he expressed the hope that the Commission would succeed in speeding up its work somewhat in the future and that it would be able to take up the question of State responsibility, which, he regretted to note, had been awaiting attention for too long.

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

12. The CHAIRMAN said that, as the Assembly had not yet allocated all the questions on its agenda, it was too early to draw up the Committee's definitive programme of work. In his letter dated 25 September 1967 (A/C.6/377), the President of the General Assembly had informed the Committee that six items had been allocated to it for consideration. In addition, the Committee would have to deal with the item entitled "Need to expedite the drafting of a definition of aggression in the light of the present international situation", which the Assembly had also decided to refer to it (A/6851/Add.1). Again, it might have to consider a question relating to the privileges and immunities of the United Nations and another concerning the reservation exclusively for peaceful purposes of the sea-bed and of the ocean floor. As the agenda might therefore be extremely heavy, it would be advisable for delegations to begin consultations immediately on the subject of setting up working parties. It would also be desirable for delegations to make their statements in the general discussion on the report of the International Law Commission as soon as possible, so that the next item of the agenda of the Committee could be taken up.

13. Mr. KANE (Senegal) said that, since the calendar of conferences for 1968 was already heavily loaded, he doubted whether it would be possible to arrange for a conference for the preparation of a convention on special missions during that year. His delegation hoped that the Secretariat would inform the Committee when it would be possible to hold such a conference.

14. Mr. ROSENNE (Israel) said that he wished to make two comments on the organization of work. First, it seemed that the Committee should await the distribution of the report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States (A/6799) before taking a final decision on the organization of its work. Secondly, he recalled that, as indicated in paragraph 105 of the report submitted by the Sixth Committee to the Assembly at its twenty-first

^{1/} International Bank for Reconstruction and Development, Convention on the Settlement of Investment Disputes between States and Nationals of Other States (Washington, 1965).

^{2/} See United Nations Conference on Diplomatic Intercourse and Immunities, Official Records, vol. II (United Nations publication, Sales No.: 62.X.I), p. 87.

^{3/} See United Nations Conference on Consular Relations, Official Records, vol. II (United Nations publication, Sales No.: 64.X.I), p. 180.

session,^{4/} some representatives had thought that it would be very useful for Sir Humphrey Waldoek, the Spécial Rapporteur on the law of treaties, to be present during the Committee's discussion of the item "Law of treaties". Since Sir Humphrey would probably not be able to remain in New York for the entire duration of the debates, the item should be taken up before his departure.

15. Mr. YASSEEN (Iraq) said that it would be extremely helpful if the experience of the Chairman of the International Law Commission Sir Humphrey Waldoek, could be made available when the topic concerning the law of treaties was considered. As Sir Humphrey would be leaving New York shortly, the Comitétee could perhaps consider that subject (item 86) at the same time as the report of the International Law Commission on the work of its nineteenth session (item 85).

16. Mr. STAVROPOULOS (Legal Counsel) said that Sir Humphrey would not be leaving New York until Friday, 13 October, and the Committee could be

expected to have completed its consideration of the law of treaties by that date. The Committee might not be able to keep up the pace of its work if it considered the report of the International Law Commission and the law of treaties simultaneously. Since the only controversial point in the report was the question where the conference on special missions would be held, the Committee should be able to take up the item on the law of treaties without undue delay.

17. As for the timing of the conference, it would not be possible to consider holding it sooner than 1969, or even 1970, if the conference was to be convened expressly to conclude the convention. However, if the convention was adopted in the General Assembly, it could be opened for signature as early as 1968.

18. After a procedural discussion in which Mr. DARWIN (United Kingdom), Mr. CIASULLO (Uruguay) and Mr. CHAMMAS (Lebanon) took part, the CHAIRMAN suggested that any decision concerning the organization of work with regard to the law of treaties should be deferred until the following day.

^{4/} Official Records of the General Assembly, Twenty-first Session, Annexes, agenda item 84, document A/6516.

The meeting rose at 12 noon.