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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.618, A/C.6/L.620)

1. Mr. SAMMUT (Malta) said that his delegation would abstain from voting on the amendment submitted by Dahomey, Ethiopia, Ghana, Kenya, Mali, Morocco, Senegal, United Republic of Tanzania and Zambia (A/C.6/L.620) to the draft resolution submitted by Argentina, Cameroon, Canada, Ecuador, Guatemala and Nigeria (A/C.6/L.618) because it did not consider that the time was ripe for a decision concerning the body to which the preparation of a convention on special missions should be entrusted. The draft articles adopted by the International Law Commission at its nineteenth session (A/6709/Rev.1 and Corr.1, chap. II, D) were the final version of a text on which Governments had already submitted comments, and they therefore represented a very good foundation for a convention acceptable to most States. Consequently, his delegation was inclined to prefer that the Sixth Committee should undertake the task. Apart from anything else, the alternative of convening a conference of plenipotentiaries would involve expenditure which the Organization could hardly afford at a time when its budget was rising steeply.

2. In any event, nothing would be lost if a decision was postponed until the twenty-third session of the General Assembly, since disagreement still existed on certain of the draft articles. In particular, it was difficult to apply a common denominator to all different types of special missions. Many of the observations made during the debate merited further consideration; there was, for instance, the indication that the privileges and immunities envisaged in the draft seemed to be broader than was strictly required for accomplishment of the tasks of some special missions. Such liberality might impose a heavy burden on States whose revenues accrued to a large extent from customs and fiscal duties. Given the temporary nature of special missions, the question of privileges and immunities to be accorded to families of members of such missions should also be re-examined. In any event, the Committee would be in a better posi-

tion to decide on the best procedure when further comments had been submitted by Governments and when the administrative and financial implications of the provisions of the draft could be fully assessed.

3. If the majority decided to vote in favour of the amendment (A/C.6/L.620), his delegation would not object to supporting draft resolution (A/C.6/L.618, as amended, not only for the sake of a possibly unanimous decision but also because it firmly hoped that the Committee would fully consider the comments and observations which Governments were being requested to submit before the twenty-third session.

4. Mr. GASTLI (Tunisia) commended the International Law Commission on having prepared draft articles on special missions which represented a considerable advance towards the codification and progressive development of international law. He was pleased to note the contacts which the Commission had had with regional juridical bodies, particularly the Asian-African Legal Consultative Committee, and he thanked the United Nations Office at Geneva for successfully organizing the third session of the Seminar on International Law.

5. Certain delegations had argued that some of the provisions of the draft articles on special missions constituted codification of international law, while others were more in the nature of progressive development of international law. In the view of his delegation, the codification and the progressive development of international law were inseparable and should go forward simultaneously; for codification should have a dual purpose. First, it should allow, as it were, a stock-taking of what existed and a systematic arrangement of the elements of the subject under review; second, and most important, it should retain only what was essential—those principles and provisions on which there was a large majority—and eliminate anything that had no prospect of survival. Codification should not lead to paralysis and hardening of the arteries, but should open new vistas for the future by allowing the natural evolution and progressive development of international law, so that it might be better suited to meet new needs.

6. While stressing the cardinal importance of codifying the principles of international law relating to special missions, his delegation wished to reaffirm the position of principle which it had stated at the twenty-first session of the General Assembly, namely, that ad hoc diplomacy should not take precedence over traditional, permanent diplomacy, to which it could not be fully assimilated, especially as concerned the privileges and immunities that should be accorded to it. That being so, certain provisions of the draft articles called for some comments.

7. Firstly, it was not desirable, in article 1 (Use of terms), to define special missions in terms of their purposes, which could be extremely varied. It would be better to define a special mission solely in terms of its temporary and precarious character. Article 1 would also be improved if it were to set out the principle that the sending or reception of a special mission could not in any way imply recognition of the Governments concerned. Secondly, his delegation considered it most important that every effort should be made to demarcate as precisely as possible the competence of a special mission in relation to the permanent mission, in order to avoid duplication and conflict in the advantages accorded; that might be done, for instance, by specifying that the division of powers and functions could, in individual cases, be the subject of an agreement between the parties concerned. Thirdly, draft article 14 (Authority to act on behalf of the special mission) would allow the head of a special mission or one of its members to communicate with the authorities of the receiving State direct; however, such authority should be granted only in cases where the sending State had no permanent mission in the receiving State. His delegation also felt that the provisions of article 30 (Inviolability of the private accommodation), which stated that the private accommodation of the members of a special mission should enjoy the same inviolability as the premises of the special mission, went too far, and it could hardly agree that the receiving State should be required to provide special protection for the private accommodation of members of special missions, which were usually hotel rooms. With respect to article 29, the personal inviolability accorded to members of special missions should be strictly limited to the performance of their functions. Again, in view of the temporary and precarious character of special missions, they did not need the exemption from dues and taxes provided in article 33. Lastly, his delegation regarded as excessive the privileges and immunities set out in articles 36, 37 and 38, which would be conferred on the administrative and technical staff of special missions, on the members of their service staff, and on the private staff of members of a special mission. If the success of a codification of the rules applicable to special missions was to be ensured, their scope of application must not be unduly extended; rather, the granting of privileges and immunities must be confined strictly to the performance of the functions of the special mission.

8. His delegation would defer to the view of the majority concerning the procedure to be followed for the adoption of a convention on special missions. Although an item relating to such a convention must certainly be included in the agenda of the twenty-third session of the General Assembly, it would be better to wait until that session before taking a final decision on the forum best suited to draw up the convention.

9. Mr. CIASULLO (Uruguay) said that, in his view, the General Assembly should undoubtedly be given the task of drawing up a convention on special missions. The many arguments in favour of that course of action had already been stated and needed no repetition. Since there was a wealth of international

practice in connexion with special missions, and since Member States were invited, in draft resolution A/C.6/L.618, paragraph 2, to submit their observations on the draft articles prepared by the International Law Commission, the Sixth Committee would have everything it needed to draw up a draft convention.

10. His delegation would therefore vote in favour of the amendment (A/C.6/L.620), although it would have preferred it to specify that the convention should be adopted by the General Assembly at its twenty-third session.

11. Mr. MUSA (Somalia) said that his delegation would support draft resolution A/C.6/L.618, as amended in document A/C.6/L.620, in order not to delay the completion of the excellent work done by the International Law Commission on special missions, and also as a token of the considerable importance it attached to the codification and progressive development of international law in a manner which would enable the new States to participate actively.

12. The proposed convention on special missions should be drawn up by the General Assembly, for the financial and technical reasons advanced earlier by the representative of Ghana (971st meeting). On the question when the convention should be concluded, everything would depend on the amount of work which the Assembly did on the item at the twenty-third session or at later sessions. The new wording proposed in amendment A/C.6/L.620 for operative paragraph 4 of the draft resolution (A/C.6/L.618) took account of that point, since it set no time-limit. His delegation wished to become a co-sponsor of the amendment.

13. In accordance with a suggestion made by Mr. GOTLIEB (Canada), the CHAIRMAN suggested that the meeting should be suspended, so that the sponsors of draft resolution A/C.6/L.618 and the sponsors of the related amendment (A/C.6/L.620) could try to reach agreement through further consultations.

It was so decided.

The meeting was suspended at 3.50 p.m. and resumed at 4.25 p.m.

14. The CHAIRMAN announced that the consultations had unfortunately not produced any positive result. Consequently, the Committee still had before it draft resolution A/C.6/L.618 and the related amendment (A/C.6/L.620).

15. Mr. YASSEEN (Iraq) pointed out that draft resolution A/C.6/L.618, even if amended—as his delegation hoped it would be—in the manner proposed in document A/C.6/L.620, would still be technically defective, since it would not include any provisions requesting the Secretariat to submit to the twenty-third session of the General Assembly suitable documentation for the preparation of the convention and—in response to the concern of certain delegations and especially that of the United Kingdom—drawing attention to the desirability of including experts in the delegations which would be participating in the work as well as to the importance of collaboration by the Special Rapporteur for the topic of special missions. He therefore suggested the inclusion in the

draft resolution of provisions comparable to those adopted by the General Assembly in the past in similar circumstances, requesting the Secretary-General to present to the General Assembly at its twenty-third session all relevant documents and to arrange for the facilities which would be required, including such experts as would be necessary, and inviting Member States to include as far as possible in their delegations to the twenty-third session of the General Assembly experts competent in the field to be considered.

16. Mr. OGUNDERE (Nigeria) commended the representative of Iraq on his suggestion, which was entirely in keeping with United Nations practice, as followed, for instance, in the case of the United Nations Conference on Transit Trade of Land-locked Countries, to which States had been invited to send experts. It also took account of the views of those who were par-

ticularly anxious that the technical character of the task of drawing up the proposed convention should be recognized. He was sure that the Iraqi suggestion would be accepted by the sponsors of the two texts before the Committee.

17. The CHAIRMAN suggested that, in the circumstances, the sponsors of the draft resolution and the sponsors of the amendment should meet again and attempt to prepare, in collaboration with the representative of Iraq and the Secretariat, a text to be voted on at the next meeting. He also asked the Secretariat to submit a statement of the financial implications of the proposed decision, in accordance with the usual practice.

It was so decided.

The meeting rose at 4.45 p.m.