Work of the International Law Commission in 1967

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It is unlikely that 1967 will be remembered as one of the vintage years of the International Law Commission. Without denying the generally valuable role played by the Commission in the codification and progressive development of international law (as, for example, in respect to the law of the sea, and the law of diplomatic and consular relations), one finds it difficult to work up enthusiasm over the results for 1967 as disclosed in the Commission's report to the United Nations General Assembly on the work of its 19th session, held at Geneva from 8 May to 14 July of that year.

Partly this is due to doubts as to the value of the Commission's principal achievement in 1967, which was the completion of a set of 50 draft articles on the so-called "special missions", namely, those accredited temporarily for limited purposes, with the consent of the receiving State, and which are not dependent on or related to existing diplomatic or consular relations between the sending and the receiving States. Apart from other considerations referred to below, there are compelling reasons for believing that, so far as international law codification and development are concerned, the subject seems to be one best left alone. Indeed, any two States dealing with the matter as between themselves would find it difficult to set down in the formal provisions of a bilateral treaty the terms and conditions subject to which they would be prepared in future to send or receive special missions to or from each other. *A fortiori*, it is more difficult to draft a satisfactory multilateral Convention, containing general rules on the matter.

Special missions represented the first item on the Commission's 1967 agenda, and the subject was given high priority. Other international law topics on the agenda which in the course of the Commission's session had ultimately to receive lesser priority were the following: (a) the relations between States and inter-governmental organizations; (b) State responsibility; and (c) succession of States and Governments. The remaining four agenda items consisted of the subject of co-operation with other international bodies, and the three formal or recurrent matters of the organization of the Commission's subsequent work, the date and place of the Commission's 1968 session, and "other business". The Commission's report recorded that 47 public meetings were held, and that there were 11 meetings of the Drafting Committee.

Returning to the draft articles on special missions, it may be noted that these are divided into three parts: Part I (arts. 1-20) dealing with the sending and conduct of special missions; Part II (arts. 21-47)

with the facilities, privileges, and immunities to be extended to such missions; and Part III (arts. 48-50) with certain general matters, including non-discrimination.

Article 1 contains a number of definitions. The definition of a "special mission" makes it clear that the draft articles deal with special missions of a temporary character sent and received only by States, and for a specific purpose, and which must be representative of the sending State; the expression does not cover missions sent by a political movement to a State or by a State to a political movement, or non-representative missions merely sponsored by a State, or missions applying to the whole field of diplomatic relations between the sending and the receiving State, or missions of a permanent or quasi-permanent character. Regarded in the light of this definition, however, most of the remaining draft articles in Part I seem banal or platitudinous, or unnecessary statements of the obvious. Thus there does not seem to be any need for providing that a special mission must be a matter of mutual consent (art. 2), or that its field of activity is determined by this consent (art. 3), or that it may be sent by two or more States, or be jointly accredited by two or more States, or that special missions may be separately sent by two or more States for questions of common interest (art. 4-6), or that a special mission may be sent to or received from an unrecognized State (art. 7), or be freely appointed after the receiving State is duly informed (art. 8). Since special missions are on a purely consensual basis, art. 15 seems particularly pointless; it provides that all official business with the receiving State entrusted to the special mission by the sending State shall be conducted with or through the Ministry of Foreign Affairs, or "with such other organ of the receiving State *as may be agreed*".

In other words, these provisions appear to add little to the definition of special missions in art. 1, or looked at from another point of view are purely descriptive statements not appropriate for inclusion in a multilateral Convention.

The necessity for an article such as art. 16 laying down rules of precedence in the case of special missions may also be queried. Surely general rules are inappropriate, as nearly always the matter will fall to be governed by the protocol of the receiving State, more particularly as the members of special missions will often not hold diplomatic rank.

As to the facilities, privileges, and immunities to be extended to special missions, the Commission decided that every special mission should be granted everything that was "essential for the regular performance of its functions, having regard to its nature and task". Accordingly, the provisions on the matter contained in the Vienna Convention on Diplomatic Relations of 18 April 1961, dealing with permanent diplomatic missions, were taken as the basis for the provisions in Part II of the draft articles, and were departed from only in respect to particular points for which a different solution was required. There had formerly been two views prevalent among members of the Commission: (a) that the facilities, privileges, and

immunities should be the same in the case of special missions as in the case of permanent diplomatic missions; and (b) that these should be less extensive than accorded to permanent diplomatic missions, being restricted to what was strictly necessary for the performance of a special mission's task.

Part II of the draft articles will not find favour with a certain number of States, and it might perhaps have been better if the Commission had adopted a set of model draft articles on facilities, privileges, and immunities which could be used optionally by States as they thought fit when sending and receiving special missions.

It remains to mention Part III of the draft articles, which contains the provisions dealing with the obligation to respect the laws and regulations of the receiving State (art. 48), the prohibition against practicing for personal profit any professional or commercial activity in the receiving State (art. 49), and the obligation not to make discrimination, when applying the provisions of the draft articles (art. 50). Here again it may be queried whether, in such a fluid area as that of special missions, States will be generally prepared to accept an obligation not to discriminate, even with the exceptions to the non-discrimination principle laid down in art. 50.

With regard to the other international law topics on the agenda, viz. relations between States and inter-governmental organizations, State responsibility, and succession of States and Governments, the Commission was, for reasons mentioned in the report to the General Assembly, unable to make further substantive progress. It did, *inter alia*, decide that a preparatory study was necessary of that branch of the law of succession, concerned with the passing of non-treaty rights and duties, and allotted this to a special rapporteur.

On the matter of topics to be added to its programme of work, the Commission considered a number of suggestions (among them the effect of unilateral acts, the use of international rivers, international bays and international straits, and international legal procedure), and eventually decided to place the topic of most-favoured-nation clauses in treaties on the list of its projects. This of course is a thorny subject for codification, let alone for progressive development, and is bedevilled by economic considerations. Nevertheless, an intensive study by the Commission can do much to clarify both practice and principle.

Lastly, the Commission's report records the useful co-operation and liaison with other international bodies, such as the Asian-African Legal Consultative Committee, the European Committee on Legal Co-operation, and the Inter-American Juridical Committee, and the holding of the Seminar on International Law at Geneva during the currency of the Commission's session.