CONVENTION ON SPECIAL MISSIONS

In the course of its first session in 1949, the United Nations International Law Commission had selected diplomatic intercourse and immunities as one of the topics for codification. At its tenth session in 1958, the Commission submitted its draft articles and commentaries on this topic to the General Assembly, and stated that although the draft dealt only with permanent diplomatic missions, diplomatic relations also assumed other forms that might be placed under the heading of “ad hoc diplomacy”, including that of special missions, and should be studied (A/3859, p. 89). The Commission requested A. E. F. Sandström, the Special Rapporteur for the topic “diplomatic intercourse and immunities”, to undertake this study and to submit his report at a future session.

The Commission decided at its eleventh session, in 1959, to place the question of ad hoc diplomacy as a special topic on the agenda for its twelfth session, and appointed Mr. Sandström as Special Rapporteur for the topic (A/4169, pp. 122-123). The Special Rapporteur presented his report on “Ad hoc diplomacy” to the Commission in anticipation of its twelfth session in 1960 (A/CN.4/129). On the basis of this report, at its twelfth session, the Commission adopted three draft articles on “special missions” together with commentaries. In the report covering the work of its twelfth session, the Commission stated that the draft should be regarded “as constituting only a preliminary survey”; the Commission, nevertheless, recommended that the General Assembly should refer the draft to the United Nations Conference on Diplomatic Intercourse and Immunities which was to meet in Vienna in the spring of 1961 (“Vienna Conference”). At the same session, the Commission, observing that the question of “diplomatic conferences” was linked not only to that of “special missions” but also to that of “relations between States and international organizations”, decided not to deal with the subject of “diplomatic conferences” for the moment (A/4425).

The General Assembly, by resolution 1504 (XV) of 12 December 1960, decided that the draft articles on special missions should be referred to the Vienna Conference so that they could be considered together with the draft articles on permanent diplomatic missions.

At the Vienna Conference, the question of special missions was referred to a Subcommittee established by the Committee of the Whole. Following consideration of the topic by the Subcommittee and by the Committee of the Whole, the Vienna Conference adopted a resolution recommending to the General Assembly that it refer the topic back to the International Law Commission (A/CONF.20/10/Add.1).

At its sixteenth session, the General Assembly adopted resolution 1687 (XVI) of 18 December 1961, requesting the Commission to study further the subject of
special missions and to report thereon to the Assembly. In pursuance of this resolution, the Commission decided at its fourteenth session, in 1962, to include the topic of special missions on its agenda for the following session (A/5209, p. 192); the Commission also indicated that the Secretariat would prepare a working paper on this topic (A/CN.4/155).

During its fifteenth session, in 1963, the Commission appointed Milan Bartoš as Special Rapporteur for the topic of special missions and decided that he should prepare draft articles, based on the provisions of the 1961 Vienna Convention on Diplomatic Relations but that he should keep in mind that special missions were, by virtue of both their functions and nature, an institution distinct from permanent missions. With regard to the scope of the topic, most of the members of the Commission expressed the opinion that for the time being the question of status of government delegates to international conferences should not be covered in the study on special missions. In addition, the Commission stated that the time was not yet ripe for deciding whether the draft articles on special missions should be in the form of an additional protocol to the Vienna Convention, 1961, or should be embodied in a separate convention or in any other appropriate form, and that the Commission would await the Special Rapporteur’s recommendations on that subject (A/5509, p. 225).

At its eighteenth session, in 1963, after discussion in the Sixth Committee of the General Assembly (A/C.6/SR.780-793), the General Assembly recommended in resolution 1902 (XVIII) of 18 November 1963 that the Commission continue its work on special missions, taking into account the views expressed in the General Assembly.

At its sixteenth session, in 1964, the Commission considered the first report of the Special Rapporteur (A/CN.4/166) and provisionally adopted sixteen articles, which were subsequently submitted to the General Assembly and to Governments for information (A/5809). The General Assembly did not discuss the report of the Commission at its nineteenth session in 1964, and consequently did not express its opinion on the draft articles.

At the first part of its seventeenth session, in 1965, the Commission considered the second report of the Special Rapporteur (A/CN.4/179) and provisionally adopted twenty-eight articles, which followed on from the sixteen articles previously adopted. All draft articles adopted at the sixteenth and seventeenth sessions were submitted to the General Assembly for its consideration and were also transmitted to Governments for comment (A/6009, pp. 163-191).

At the twentieth session of the General Assembly, in 1965, the draft articles and general topic of special missions were discussed in the Sixth Committee of the General Assembly (A/C.6/SR.839-853). The General Assembly adopted resolution
2045 (XX) on 8 December 1965, and recommended that the Commission, taking into account the views expressed during the twentieth session and the comments submitted by Governments, present final drafts on this topic in the report of the Commission’s work at its eighteenth session.

At its eighteenth session, in 1966, the Commission had before it the third report of the Special Rapporteur (A/CN.4/189 and Add.1 & 2) and comments received by Governments on the draft articles (A/CN.4/188 and Add. 1-3). The Commission examined certain questions of a general nature affecting special missions which had arisen out of the opinions expressed in the Sixth Committee of the General Assembly and the written comments by Governments, and which it was important to settle as a preliminary to the later work on the draft articles (the nature of the provisions relating to special missions; distinction between the different kinds of special missions; the question of introducing into the draft articles a provision prohibiting discrimination; reciprocity in the application of the draft; relationship with other international agreements; form of the instrument relating to special missions; adoption of the instrument relating to special missions; preamble; arrangement of the articles; draft provisions concerning so-called high-level special missions; introductory article). As the Commission did not have time to consider the comments of Governments on the draft articles on special missions, and as a limited number of Governments had communicated their comments, the Commission decided to request Members States to forward their comments on the subject as soon as possible and, in any case, before 1 March 1967 (A/6309/Rev.1, pp. 274-277).

At the twenty-first session of the General Assembly, after a debate in the Sixth Committee (A/C.6/SR.902-919), the General Assembly adopted resolution 2167 (XXI) of 5 December 1966, in which it recommended that the Commission continue its work relating to special missions with the object of presenting a final draft on the topic in its next report.

At its nineteenth session, in 1967, the Commission examined the Special Rapporteur’s fourth report (A/CN.4/194) and took into account the written comments received from Governments (A/CN.4/188 and Add.1-4) and the views expressed in the Sixth Committee. The Commission adopted its final draft on special missions, comprising fifty draft articles, with commentaries, and submitted them to the General Assembly with a recommendation “that appropriate measures be taken for the conclusion of a convention on special missions” (A/6709/Rev.1 and Corr.1, p. 347).

At the twenty-second session of the General Assembly, in 1967, after discussion (A/C.6/SR.957-968, 970-974), the Sixth Committee recommended that an item entitled “Draft convention on special missions” be placed on the provisional
agenda of the General Assembly’s twenty-third session with a view to the adoption of such a convention by the Assembly (A/6898). By resolution 2273 (XXII) of 1 December 1967, the Assembly adopted the recommendation of the Sixth Committee and invited Member States to submit comments and observations on the draft articles.

At the General Assembly’s twenty-third and twenty-fourth sessions, in 1968 and 1969, respectively, the Sixth Committee considered the item “Draft convention on special missions” on the basis of the draft adopted by the Commission. At each session, Switzerland was invited to participate in the relevant proceedings of the Sixth Committee as an observer without the right to vote.

At the twenty-third session, the Sixth Committee had before it the draft articles adopted by the Commission in 1967; it also had before it comments submitted by Governments on the draft text and amendments to individual articles put forward by various delegations (A/6709/Rev.1 and Corr.1). After having decided to leave aside, at that stage, article 1 (on the use of terms), the Sixth Committee examined and adopted 29 of the 50 articles in two stages. In the first stage, it considered articles 2 to 29 and article 31, and referred them all to a drafting committee in their original or in an amended form. In the second stage, it considered the texts recommended by the Drafting Committee and adopted them, generally without change (A/7375). The General Assembly, by resolution 2419 (XXIII) of 18 December 1968, placed the examination of the draft convention upon the agenda of its twenty-fourth session.

At the twenty-fourth session, in 1969, the Sixth Committee considered the twenty draft articles which it had not been able to discuss at its previous session and on new amendments proposed by the United Kingdom (A/C.6/L.745 and Corr. 1) and by Switzerland (A/C.6/L.766). It also adopted a draft preamble (A/C.6/L.751/Add.6) and a set of final clauses for the Convention (A/C.6/L.751/Add.5).

On the proposal of Bolivia, Brazil, India, Iraq, Trinidad and Tobago and Tunisia (A/C.6/L.764 and Add.1 and 2), the Sixth Committee decided, on 29 October 1969, to replace article 42 of the Commission’s draft, concerning the settlement of civil claims, by a draft resolution on the settlement of civil claims which the Committee later adopted and recommended for adoption by the General Assembly. On 8 December 1969, the General Assembly adopted resolution 2531 (XXIV) (Settlement of civil claims in connexion with the Convention on Special Missions).

Also during the twenty-fourth session, Switzerland proposed a new amendment on the settlement of disputes, which would have provided that disputes arising out of the interpretation or application of the Convention were to lie within the compulsory jurisdiction of the International Court of Justice (A/C.6/L.766). While this proposal was rejected by the Sixth Committee, a sub-amendment submitted by 12
states to incorporate the substance of the Swiss proposal in a draft optional protocol was adopted by the Sixth Committee on 10 November 1969 (A/C.6/L.769 and Add. 1). After coordination and review by the Drafting Committee, the final text of the draft Optional Protocol was adopted by the Sixth Committee on 4 December 1969 (A/C.6/L.779/Add.5).

The Sixth Committee also had before it three drafts of final clauses submitted to the Drafting Committee by France, the United Kingdom and the United States; by the Union of Soviet Socialist Republics; and by Ghana and India, respectively. The Sixth Committee adopted the first of these proposals on 17 November 1969 (A/C.6/L.773, annex, part II), which would become articles 50 to 55 of the Convention.

By resolution 2530 (XXIV) of 8 December 1969, the General Assembly, upon the recommendation of the Sixth Committee, adopted the Convention on Special Missions and the Optional Protocol concerning the Compulsory Settlement of Disputes relating thereto. The final provisions of the Convention open it for signature and for ratification or accession by all States Members of the United Nations or members of any of the specialized agencies or of the International Atomic Energy Agency or parties to the Statute of the International Court of Justice, and also by any other State invited by the General Assembly to become a party to the Convention. The final provisions of the Optional Protocol open it for signature and for ratification or accession by all States which may become parties to the Convention. The Convention and the Optional Protocol came into force on 21 June 1985.