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Resolution 1687 (XVI) of the General Assembly concerning the question of special missions - Working document prepared by the Secretariat

Topic:
Special missions

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QUESTION OF SPECIAL MISSIONS (GENERAL ASSEMBLY RESOLUTION 1687 (XVI))

[Agenda item 3]

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Working paper prepared by the Secretariat

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1. At its tenth session in 1958, the International Law Commission considered the question of "Diplomatic intercourse and immunities" and prepared draft articles on the subject together with a commentary (A/3859, chapter III).

2. In its report, the Commission 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", covering itinerant envoys, diplomatic conferences and special missions sent to a State for limited purposes. The Commission considered that these forms of diplomacy should also be studied, in order to bring out the rules of law governing them. It requested Mr. A. E. F. Sandström, the Special Rapporteur for the topic "diplomatic intercourse and immunities", to undertake that study and to submit his report at a future session (*ibid.*, para. 51).

3. At its twelfth session in 1960, the Commission adopted three draft articles, which are reproduced below (A/4425, chapter III):¹

"ARTICLE 1

"Definitions

"1. The expression 'special mission' means an official mission of State representatives sent by one State to another in order to carry out a special task. It also applies to an itinerant envoy who carries out special tasks in the States to which he proceeds.

"2. The expression '1958 draft' denotes the draft articles on diplomatic intercourse and immunities prepared by the International Law Commission in 1958.

"ARTICLE 2

"Applicability of section I of the 1958 draft

"Of the provisions of section I of the 1958 draft, only articles 8, 9 and 18 apply to special missions.

"ARTICLE 3

"Applicability of sections II, III and IV of the 1958 draft

"1. The provisions of sections II, III and IV apply to special missions also.

¹ In the 1958 draft, sections I, II, III and IV refer respectively to (1) diplomatic intercourse in general; (2) diplomatic privileges and immunities; (3) conduct of the mission and of its members towards the receiving State, and (4) end of the function of a diplomatic agent. Articles 8, 9 and 18 concern persons declared *persona non grata*, notification of arrival and departure, and the use of flag and emblem.

"2. In addition to the modes of termination referred to in article 41 of the 1958 draft, the functions of a special mission will come to an end when the tasks entrusted to it have been carried out."

4. In its report to the General Assembly covering the work of its twelfth session (*ibid.*, para. 36), the Commission recommended that this draft should be referred to the United Nations Conference on Diplomatic Intercourse and Immunities scheduled to be held at Vienna in the spring of 1961, in order that these articles might be embodied in whatever convention the Conference might prepare. The Commission added that, owing to lack of time, it had not been able to give the topic the thorough study it would normally have done. The Commission explained that the three articles, together with their commentary, should therefore be regarded as constituting only a preliminary survey carried out mainly in order to put forward certain ideas and suggestions which could be taken into account at the Vienna Conference.

5. On the recommendation of the Sixth Committee, the General Assembly, by its 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 might be considered together with the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission in 1958.

6. Pursuant to General Assembly resolution 1504 (XV), the Vienna Conference discussed the question and decided, at its second plenary meeting² held on 3 March 1961, to refer it to the Committee of the Whole, together with the question of diplomatic intercourse and immunities. At its 23rd meeting, held on 21 March 1961, the Committee of the Whole set up a Sub-Committee, composed of the representatives of Ecuador, Iraq, Italy, Japan, Senegal, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America and Yugoslavia, to study the question of special missions and to submit a report thereon.³

7. In its report⁴ to the Committee of the Whole, the Sub-Committee on special missions stressed the im-

² *United Nations Conference on Diplomatic Intercourse and Immunities* (Vienna, 2 March-14 April 1961), *Official Records*, vol. I (A/CONF.20/14), United Nations publication, Sales No.: 61.X.2, summary records of the second plenary meeting, para. 12.

³ *Ibid.*, summary records of the 23rd meeting of the Committee of the Whole, para. 70.

⁴ *Ibid.*, vol. II (A/CONF.20/14/Add.1), United Nations publication, Sales No.: 62.X.1, document A/CONF.20/C.1/L.315.

portance of the subject referred to it. The Sub-Committee then took note of the International Law Commission's statement that the articles on special missions constituted only a preliminary survey. The Sub-Committee noted that, because of lack of time, the draft articles on special missions had, in contrast with the usual practice, not been submitted to Governments for their comments before being drafted in final form. The Sub-Committee further noted that the draft articles on special missions did little more than indicate which of the rules on permanent missions applied, and which did not apply, to special missions. The Sub-Committee considered that, while the basic rules might in fact be the same, it could not be assumed that such an approach necessarily covered the whole field of special missions.

8. In view of the foregoing considerations the Sub-Committee concluded that, while the draft articles on special missions provided an adequate basis for discussion, their elaboration into texts suitable for inclusion in a convention or other instrument would require extensive and time-consuming study. Final study and recommendations on special missions would, furthermore, have to await the approval of a complete set of articles on permanent missions, at least by the Committee of the Whole. The question thus arose whether the Sub-Committee could find the time necessary for a proper and thorough study of the subject of special missions, and whether the Committee of the Whole and the Conference itself would have sufficient opportunity to discuss any detailed recommendations made by the Sub-Committee. The Sub-Committee was of the opinion that this question should be answered in the negative, having in mind the limited duration of the Conference, the heavy schedule of the Committee of the Whole and the plenary sessions of the Conference, and the limitations on concurrent meetings of the Sub-Committee and other organs of the Conference imposed by budgetary and staffing considerations. The Sub-Committee therefore unanimously recommended that the Committee of the Whole should report to the Conference that the subject of special missions should be referred back to the General Assembly, with the suggestion that the Assembly should entrust to the International Law Commission the task of the further study of the topic in the light of the Convention to be established by the Conference.

9. At its 39th meeting, held on 4 April 1961, the Committee of the Whole unanimously adopted the Sub-Committee's recommendation and requested the Drafting Committee to prepare, for submission to the Conference, a draft resolution along the lines of that

recommendation.⁵ Accordingly, at its fourth plenary meeting on 10 April 1961, the Conference adopted a resolution⁶ recommending to the General Assembly of the United Nations that it refer the question back to the International Law Commission.

10. At its 1014th plenary meeting, held on 25 September 1961, the General Assembly included the "Question of Special Missions" in the agenda of its sixteenth session, and at its 1018th plenary meeting, held on 27 September, it decided to refer the items to the Sixth Committee, which discussed it at its 731st meeting held on 15 December 1961.

11. In its report to the General Assembly⁷ the Sixth Committee stated that it had approved the recommendation of the Vienna Conference and added that certain representatives had expressed the hope that the International Law Commission would take up the question as soon as possible.

12. At its 1081st plenary meeting, held on 18 December 1961, the General Assembly, acting on the recommendation of the Sixth Committee,⁸ adopted resolution 1687 (XVI), which is reproduced in full below:

QUESTION OF SPECIAL MISSIONS

"The General Assembly,

"Recalling its resolution 1504 (XV) of 12 December 1960, whereby it referred to the United Nations Conference on Diplomatic Intercourse and Immunities the draft articles on special missions contained in chapter III of the report of the International Law Commission covering the work of its twelfth session,

"Noting the resolution on special missions adopted by the United Nations Conference on Diplomatic Intercourse and Immunities at its fourth plenary meeting, held on 10 April 1961, recommending that the subject be referred again to the International Law Commission,

"Requests the International Law Commission, as soon as it considers it advisable, to study further the subject of special missions and to report thereon to the General Assembly."

⁵ *Ibid.*, vol. I, summary records of the 39th meeting of the Committee of the Whole, para. 63.

⁶ *Ibid.*, vol. I, summary records of the fourth plenary meeting, para. 3; and vol. II, document A/CONF.20/10/Add.1, resolution I.

⁷ *Official Records of the General Assembly, Sixteenth Session, Annexes*, vol. III, agenda item 71, document A/5043, paras. 9 and 10.

⁸ *Ibid.*, para. 12.