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CONTENTS

Agenda item 85:	
Draft Convention on Special Missions ( <i>con-</i> <i>tinued</i> ) . . . . .	1
Organization of the work of the Committee. . . .	5

Chairman: Mr. K. Krishna RAO (India).

AGENDA ITEM 85

Draft Convention on Special Missions (*continued*)  
(A/6709/Rev.1 and Corr.1, A/7156 and Add.1 and 2;  
A/C.6/L.646)

Article 5 (*Sending of a joint special mission by two  
or more States*)

1. Mr. BEN MESSOUDA (Tunisia) said that his delegation had no objection to the wording of article 5. He noted, however, that paragraph (3) of the International Law Commission's commentary on the article did not mention the case, which could arise, in which one of the sending States of a proposed joint special mission was not represented in the future receiving State. In the opinion of the Tunisian delegation, it should be understood, under article 5, that one of the sending States represented in the receiving State could engage in consultations on behalf of the third State as well as itself and that the receiving State, for its part, could then suggest separate consultations.

2. Mr. HAMBYE (Belgium) said that his delegation was in favour of the content of article 5. Referring, however, to his suggestion regarding the second sentence of article 4 (1042nd meeting), he expressed the hope that the Drafting Committee would delete the words "objects thereto" at the end of article 5 and replace them by a positive expression.

3. Mr. SPERDUTI (Italy) supported that suggestion in the interest of uniformity among the various provisions of the draft. With that in mind, he proposed that article 5 should be worded as follows:

"If two or more States intend to send a joint special mission to another State, they shall so inform that State in order to obtain its prior consent."

4. Mr. VEROSTA (Austria) associated himself with the suggestions of the Belgian and Italian delegations, feeling that the novelty of the idea of joint special missions should not obscure the need for consent. It would be advisable to avoid having to distinguish between missions for which the consent of the receiv-

ing State was necessary and missions for which only an absence of opposition was required.

5. Mr. MULIMBA (Zambia) said that his delegation wished first to support the comment of the Tunisian representative, since many developing countries considered that article 5 should enable one or other of the future sending States to obtain the consent of the receiving State on behalf of the others. The wording of article 5, moreover, might well be modified by the Drafting Committee in the light of article 2, which had already been approved. The Zambian delegation would accordingly suggest the following formulation:

"Two or more States may send a joint special mission to another State with the consent of the latter, previously obtained by either of them through diplomatic or other channels."

6. The Zambian delegation considered that the debates had shown that a considerable number of delegations would prefer articles 4, 5 and 6 to be rearranged. That possibility should, in his opinion, be considered. At the 1043rd meeting, he had pointed out that there was a gap in the draft articles regarding the problem of special missions a State proposed to send, after several visits, to one or more States where they had not originally been expected. In order to make good that omission he suggested that if articles 4, 5 and 6 were combined in a new article 4, it should be followed by an article 4 *bis* reading as follows:

"What the sending State decides, after it has dispatched a special mission, that the mission should visit an additional State or States to those originally informed, it shall inform the State currently being visited and the State or States not yet visited of this fact, and disclose to the additional receiving State or States, on seeking their consent, details of the special mission's itinerary in the State or States previously visited by it."

7. Mr. ALVAREZ TABÍO (Cuba) said he had no objection to the content of article 5 as it stood, but hoped that the wording of the article would be brought into line with that of article 4. To that end, he suggested the following wording:

"If two or more States intend to send a joint special mission to another State, they shall so inform the receiving State when they approach it in order to obtain its consent".

8. Mr. SEYDOU (Niger) also thought that the word "consent" should be used in article 5 as in the preceding article. Consent supposed prior consultation. If the idea of consent was based on that of consultation, the use of the verb "to object" would be better balanced.

9. Mr. VEROSTA (Austria) pointed out that in paragraph (4) of the commentary on article 5, the word "jointly" in the phrase reading "the sending States are obliged to appoint the members of the mission jointly" could create difficulties for certain States, including Austria, since that procedure would hardly be acceptable to their Heads of State or Government.

10. Mr. MOLINA LANDAETA (Venezuela) said that his delegation would like to ask the Expert Consultant what considerations had led the International Law Commission to refer in articles 4 and 5 of its draft to the need for consultation rather than the "consent" required in other provisions.

11. Mr. BARTOS (Expert Consultant) said that in order to understand that discrepancy it was necessary to recognize, as the International Law Commission had done, the essential difference between the institution referred to in articles 2 and 3 and that referred to in article 4 *et seq.* Although the first, the ordinary special mission, presupposed only the consent of the receiving State, the position with regard to the second was more complex and it was necessary, in order to clarify it, to refer to actual situations. He described how the institution referred to in article 4 (Sending of the same special mission to two or more States), which was of Latin American origin, had come into being in three different stages.

12. First, the new Governments that had emerged from the independence movement of the nineteenth century in Latin America had needed to confirm the result of their liberation with other States and had therefore sent travelling missions. Since those missions had been both political and legal in nature, a distinction had grown up between the act of consultation, the only purpose of which was to secure acceptance of the mission, and the obtaining of consent, the latter being given only after verification of the community of interest between the republics concerned.

13. Secondly, the practice which had grown up more recently, especially in Africa and Asia, and in connexion with goodwill missions in particular, which were even more political in character, had made it possible, without obstructing the work of travelling missions, to allow for the position of certain States which refused to receive a proposed mission either because it was visiting a State antagonistic to it or for prestige reasons connected with the order in which the States were visited.

14. Thirdly, experience had shown States, particularly in Latin America, that it was better to avoid consenting prematurely to the visit of a purchasing mission if, on its arrival, the mission was likely to have already filled its quota in the States previously visited. In such a case, consent was given only when the sending State had, after consulting the States likely to receive the mission, established its itinerary and programme and the number of States to be visited.

15. He emphasized that because of that factual background, a travelling mission, which came within the context of multilateral diplomacy, could only be undertaken following consultations with—in other words, approaches to—several States. The same was true of the type of mission referred to in article 5. However, the different conditions in which the two

types of mission had come into being had led the International Law Commission to recognize differences between them with respect to the results of such approaches. In so far as the special mission considered in article 4 was concerned, the "refusal", which had effects *inter alios*, enabled States which might wish to avoid antagonism or blows to their prestige to so indicate. In the case of the joint mission referred to in article 5, a joint approach was made to a State by other States, but there was no obligation on either as a result of that approach. The special nature of missions of that type, to which attention had first been drawn by the developing countries at the 1961 United Nations Conference on Diplomatic Intercourse and Immunities, derived from the desire of those countries and new States to be able to organize a joint action enabling them either to acquaint themselves jointly with international practice or to enter into relations with other States in order, for example, to seek new markets. He noted, in that connexion, that it was at the request of the developing countries that the International Law Commission had included article 5 in the draft.

16. Mr. KESTLER FARNES (Guatemala) said that the suggestion for replacing the idea of consultation by that of consent raised a problem not only of wording but of principle. It should be understood that the two terms referred to separate phases, consultations often being a necessary preliminary to the obtaining of consent. While he did not wish to revert to the advantages presented by a system of consultations—advantages which had already been stressed by the Expert Consultant—it should be recalled that it was a practice established by diplomatic law, its purpose being to facilitate relations among States. He therefore considered that it would be useful to retain the term "consulted" in the text of article 5 if it was hoped to encourage States to accede to or ratify the Convention. His delegation regretted that sufficient attention had not been given to that question of principle when article 4 was considered and hoped that the Committee would give more careful study to article 5 before sending it to the Drafting Committee.

17. In reply to a question by the Chairman, he explained that he had not been requesting a vote on article 5.

18. Mr. MOLINA LANDAETA (Venezuela) said that his delegation was in favour of retaining the present wording of article 5 and considered that conclusions in support of such a position might usefully be drawn from the Expert Consultant's statement. First, the use in the draft of the term "consulted" was by no means the result of chance. The Commission had constructed a draft which was based on a precise concept, and there was a risk that upsetting the terminology might affect that over-all concept. The text of article 5, like the original text of article 4, spoke of consultations and not consent because two different ideas were involved, the purpose of consultations being to prepare the way for consent. He recalled that the practice of consultations had been developed mainly in Latin America, which justified the interest attached by the delegations of the countries of that region to the defence of the practice. He considered

that it would also be useful to state expressly in article 5 that the receiving State had the right to object to the sending of a special mission.

19. His delegation, therefore, found the present text of article 5 perfectly satisfactory, although it was ready to give favourable consideration to any improvements which might be proposed in the wording, provided the principle of consultations was not called in question.

20. Mr. QUERALTO (Uruguay) endorsed the comments of the Venezuelan representative.

21. The CHAIRMAN suggested that the text of article 5 prepared by the International Law Commission should be sent to the Drafting Committee, with the request that in considering it, it should take into account the relevant views expressed in the Sixth Committee and also the wording of article 4.

*It was so decided.*

*Article 6 (Sending of special missions by two or more States in order to deal with a question of common interest)*

22. Mr. ROBERTSON (Canada) said that, although his delegation had no objection to make regarding the substance of the text prepared by the International Law Commission, it nevertheless had misgivings as to its application. The wording of article 6 seemed to be in contradiction to the passage in the historical background preceding the draft articles in which it was stated that most of the members of the Commission had expressed the opinion that for the time being the terms of reference of the Special Rapporteur should not cover the question of delegates to congresses and conferences.<sup>1/</sup> It might therefore be useful if the Drafting Committee would indicate how article 6 differed from the provisions applying to delegates to congresses and conferences.

23. He pointed out that the draft articles did not cover the situation where two or more States sent a special mission to two or more States. The Drafting Committee might also be given the task of finding wording for article 6 which would cover that question.

24. Mr. OWADA (Japan) said that his delegation had no objection to make regarding the substance of the present text of article 6. It wished, however, to express its concern at the lack of clarity of the article, which made it possible to interpret it as applying to delegates to international conferences, even though the latter were not expressly mentioned. The International Law Commission's intention was clear from a reading of the passage in the historical background already referred to by the Canadian representative: the Commission had intended to exclude delegates to international conferences from the scope of the draft articles. However, while such exclusion was perfectly justified in the case of delegates to international conferences convened by international organizations, where the situation would be governed by other provisions, the same was not true in the case of delegates to conferences convened by States. In his delegation's view, such delegates should be accorded the same treatment as special missions. Nevertheless, if it

was desired to retain the idea set forth by the Commission in the historical introduction, the question arose, in connexion with the application of article 6, where the distinction between special missions, to which the draft would apply, and delegates to international conferences convened by States, to which it would not apply, should be drawn. His delegation considered that the precise scope of article 6 must be made clear.

25. Mr. MYSLIL (Czechoslovakia) said that, while not denying that the international practice referred to in article 6 did exist, he questioned the purpose of the article, since there was no legal relationship between the various sending States. The only legal relationship which could be said to exist in the situation dealt with in article 6 was the purely bilateral relationship between each of the sending States and the receiving State. Between the sending States there was only a political or economic relationship. There was no reference to legal relationships between the sending States in the commentary on the article, and it might, moreover, be noted that up to the last minute the Commission had hesitated to make that provision a separate article, as could be seen from the foot-note to the article. His delegation therefore considered it pointless to retain article 6.

26. Mr. MOSER (Observer for Switzerland) stressed the ambiguity of the present text of article 6, which failed to give a clear answer to the question whether the draft articles applied to delegates to international conferences convened by States. In his opinion it was obvious that the draft articles did not apply to them, since such delegates could not be regarded as members of missions "to another State". Reference should, moreover, be made in that regard to paragraph 17 in the historical background preceding the draft articles, referred to by the Canadian representative. His country availed itself of the opportunity to express the hope that the status of delegates to international conferences convened by States would be regulated as soon as possible. The fact remained that the interpretation of the present text of article 6 was a rather delicate matter, since it was difficult to draw a distinction between the cases covered by it and the case of delegates to international conferences of the type mentioned. While it could be stated with certainty that article 6 applied to cases where the number of States concerned was restricted, the situation was different in cases where some fifteen or twenty States participated in the discussions. Furthermore, the same difficulty would arise when the Committee came to deal with article 18. It would perhaps be appropriate to delete article 6, but if the Committee intended to retain it, it would be necessary to indicate clearly whether or not it applied to delegates to international conferences convened by States.

27. Mr. SPERDUTI (Italy) said that, while he supported the remarks made by the previous speakers, if the Sixth Committee should decide to retain article 6 he would like to draw its attention to the need for greater clarification of the conditions it contained. The expression "with the agreement of all of them", towards the end of the article, referred to two closely linked factors: on the one hand, the sending of a special mission by two or more States, and on the

<sup>1/</sup> See Official Records of the General Assembly, Twenty-second Session, Supplement No. 9, para. 17.

other hand the purpose of the mission, namely the study of a question of common interest. As it stood, the expression seemed to refer solely to "a question of common interest", whereas it should refer equally to the sending of a special mission. The solution might perhaps be to insert the words "with the agreement of all of them" after the words "to another State", or to place that part of the sentence at the end of the article after the words "question of common interest".

28. Whatever the solution adopted—and it was also appropriate to consider whether, in the case in point, the term "consensus" was not preferable to "agreement"—it was certain that the phrase "with the agreement of all of them" should be given a more suitable position.

29. Mr. CASTREN (Finland) considered that the need and appositeness of article 6 were disputable and that the general rules contained in article 2 should be sufficient to cover the particular case it envisaged. Moreover, the scope of article 6 was neither clear nor precise, as the representative of Czechoslovakia and the observer for Switzerland had already pointed out. In that connexion, it might be well to recall the comments made by the Austrian and Swedish Governments (see A/7156). In the view of the Austrian Government, "this article should clearly state if and to what extent the present draft articles shall apply to delegations to Congresses and Conferences convened by States"; while the Swedish Government had wondered which were the special cases provided for in article 6, since it was obvious from the commentary of the International Law Commission that the article had not been included in the draft in order to extend the scope of the draft Convention to delegates to international conferences in general.

30. His delegation hoped that the debate would cast some light on that point and, in the meantime, it would make its final position clear later.

31. Mr. SINCLAIR (United Kingdom) shared the concern of the other delegations regarding the meaning and scope of article 6. The basic problem was whether the article could be interpreted as being applicable in the case of an *ad hoc* conference convened by a State. To the extent that it could be so interpreted, it must be acknowledged that the wording lacked clarity. His delegation intended to propose at a later stage the inclusion in the draft Convention of an article which would deal in detail with *ad hoc* conferences convened by a State, since the latter differed greatly from conferences convened by an international organization. For the time being, he shared the doubts expressed as to the need for article 6, since the general rule set out in article 2 was surely sufficient to meet the particular case envisaged. He was accordingly prepared to support the deletion of article 6.

32. Mrs. d'HAUSSY (France) had no objection to make to the principle embodied in article 6, but she would like to see the inclusion in the draft Convention of special provisions relating to international conferences, which were not covered by the article in question.

33. Mr. YASSEEN (Iraq) agreed that it was obvious from a perusal of the International Law Commission's commentary that the Commission had not wished to

broach the question of international conferences. He felt, however, that in the circumstances the point at issue was not international conferences, in the strict sense of the term, since such conferences required lengthy preparation and involved a certain solemnity, but discussions and negotiations could take place among several States simultaneously without thereby meriting the title of conference. True, it was not always simple to draw a rigid dividing line between international conferences and such meetings or discussions. But whereas the problems raised by conferences were dealt with by customary international law, such was not the case with regard to discussions of a particular nature which had not yet been brought under any system of norms. For that reason, article 6 met a definite need.

34. The expression "with the agreement of all of them" was justified, for the International Law Commission had wished to emphasize that the agreements referred to the most important point, namely that of dealing with "a question of common interest".

35. Mr. DAVIS (Liberia) felt that the provisions of articles 2 and 5 made the retention of article 6 superfluous, and he was in favour of deleting it.

36. Mr. ROSENSTOCK (United States of America) supported the remarks of the representative of Czechoslovakia. While appreciating the viewpoint expressed by the representative of Iraq, he failed to see in what way a description of some routine and sensible practices usually followed by States in the matter of "discussions" but implying neither rights nor duties on any one's part could constitute a legal norm. In the view of his delegation, the inclusion of the article could only produce confusion. His delegation, in the interest *inter alia* of expediting the Committee's work, formally proposed the deletion of article 6.

37. Mr. FRANCIS (Jamaica) was unable to support the United States proposal. Endorsing the views expressed by the representative of Iraq, he pointed out that article 6 was of definite importance for the developing countries. In the past, Jamaica had not only received several missions of the kind referred to, but had even participated in sending such a mission.

38. What would happen if article 6 were deleted was that the receiving State could ask the sending State to send separate missions at different times in accordance with the provisions of article 2, or else to send only one joint mission as envisaged in article 5. That indicated the scope and importance of article 6, which should be retained after the necessary improvements had been made in its wording.

39. Mr. DADZIE (Ghana) shared the doubts expressed by the representatives of Czechoslovakia, Italy and the United Kingdom, and was likewise in favour of deleting article 6. The fact that two or more States sent a special mission to another State at the same time created no legal bond between them; it was incumbent upon each of them to secure the consent of the receiving State. The question of compatibility between different missions might arise, but that was a political question and it was for the receiving State to judge whether it could receive two or more special missions.

40. His delegation could not countenance the view that the sending of a special mission by two or more States could be likened to the convening of an international conference—a question which was being studied by the International Law Commission. He would support the United States proposal for the deletion of article 6.

41. Mr. MOTZFELDT (Norway) intimated that his delegation would support any proposal the United Kingdom might introduce for a new article on international conferences.

42. The CHAIRMAN stated that the Committee had before it a formal proposal for the deletion of article 6.

43. Mr. MOLINA LANDAETA (Venezuela), speaking on a point of order, recalled the decision taken by the Committee on 16 October, and noted that, since the time-limit set for the submission of amendments to article 6 had expired, the proposal of the United States representative was not receivable. The deletion of article 6 could be envisaged only when the Drafting Committee had sent it back to the Committee for a second reading.

44. Mr. DADZIE (Ghana) maintained that the United States proposal was acceptable since, under rule 121 of the rules of procedure of the General Assembly,

the Chairman could permit the discussion and consideration of amendments, or of motions as to procedure, even though those amendments and motions had not been circulated or had only been circulated the same day.

45. Mr. CHAMMAS (Lebanon) said that, while commending the concern of the Venezuelan representative that decisions taken by the Committee on procedural matters should be respected, he felt that those decisions should be interpreted with a certain degree of flexibility. He hoped that before voting on the United States proposal the delegations would have time to consult their Governments.

46. The CHAIRMAN proposed that the voting on the United States proposal that article 6 be deleted should take place at the first meeting the following week.

*It was so decided.*

#### Organization of the work of the Committee

47. The CHAIRMAN suggested that the deadline for the submission of amendments to articles 11 to 15 be 6 p.m. on Monday, 21 October 1968.

*It was so decided.*

*The meeting rose at 1.15 p.m.*

