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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, A/C.6/L.654 and Add.1, A/C.6/L.664,  
A/C.6/L.672)

*Article 7 (Non-existence of diplomatic or consular  
relations and non-recognition (continued))*

1. Mr. DADZIE (Ghana) said that his delegation attached great importance to the principles on which the existing text of article 7 was based, and would not be able to support the amendment of the United Kingdom and Nigeria (A/C.6/L.654 and Add.1), which would eliminate one of the two points expressed in the International Law Commission's text. It was essential to make a distinction between those two points since the problems raised by the effects of non-existence of diplomatic or consular relations on the one hand, and of non-recognition on the other, were entirely different. At the same time, the International Law Commission itself was at fault in that, in the wording of article 7, paragraph 2, it had not taken account of the different doctrines concerning recognition. On that question, his delegation supported the idea expressed in the French amendment (A/C.6/L.664).

2. On the other hand, he fully understood the concern expressed by the United Kingdom representative, since he believed that when—as in the present case—different opinions were irreconcilable, any codification conference should allow for their coexistence. Paragraph 2 should therefore be reworded accordingly; and his delegation wished to propose an amendment (A/C.6/L.672) to article 7, to the effect that paragraph 2 should be replaced by the following text:

"A State may send a special mission to a State or to an entity, or receive one from a State or an entity, which it does not recognize; and this act by itself, unless so agreed between them, shall not constitute one of recognition."

3. Mr. SECARIN (Romania) said that his delegation attached great importance to the rules proposed by the International Law Commission in the two paragraphs of article 7, since they provided an answer to the question whether non-existence of diplomatic or

consular relations and non-recognition could, in law, prevent States from sending or receiving special missions. In article 7, paragraph 1, which stated that the existence of diplomatic or consular relations was not necessary for the sending or reception of a special mission, the International Law Commission had applied a principle which had already been established in the field of consular relations by article 2, paragraph 3, of the 1963 Vienna Convention on Consular Relations and also, perhaps, by article 69 *bis* adopted by the United Nations Conference on the Law of Treaties,<sup>1/</sup> namely that legal relations of different types could be established and developed, to a certain extent, independently of one another.

4. Article 7, paragraph 2, correctly reflected the practice of States; and by adopting an explicit rule, the International Law Commission had contributed to the progressive development of law, since it had strengthened the institution of special missions, which were often the instrument of preliminary contacts with a view to establishing normal diplomatic relations. Paragraph 2 should, therefore, help to promote friendly relations between countries.

5. Finally, the International Law Commission had quite rightly refrained from dealing with the question of the effects which the sending or reception of special missions might have on recognition. That question would, it seemed, call for a special study of the legal consequences of the institution of special missions itself, and also of the different significance which different States sometimes attached to it. His delegation believed that the existing text of article 7 should be retained.

6. Mr. SPERDUTI (Italy) thought that the United Kingdom-Nigerian amendment (A/C.6/L.654 and Add.1) was reasonable and relevant. Since the International Law Commission had itself observed at the end of paragraph (2) of its commentary on article 7 that the problem of recognition "lies outside the scope of the topic of special missions", the draft Convention should surely not contain provisions concerning recognition, as it did at present. Paragraph 2 of article 7 should not be considered as a simple statement of doctrine, but rather as a conventional provision.

7. His delegation did not think that the Ghanaian representative's text (A/C.6/L.672) could be included in the draft Convention, since the concept of entity mentioned in that text was outside the scope of a convention dealing only with States.

8. At the same time, it should be remembered that States parties to the Convention might perhaps include some States which did not recognize one another. In

<sup>1/</sup> See A/CONF.39/C.1/L.370/Add.2, p. 67.

principle, they would not consider themselves bound, in regard to each other, by its provisions. But if they did consider themselves bound by its provisions, they would thereby be recognizing each other as States and subject to international law.

9. However, special missions were valuable even in the absence of recognition, and States which did not recognize one another had a number of different procedures to choose from in sending or receiving special missions. They might, for instance, conclude an *ad hoc* agreement based on the main provisions of the Convention and incorporating the terms of the French amendment (A/C.6/L.664).

10. As one State might wish to recognize another State as a result of the sending of a special mission, and as the Convention should therefore not exclude the possibility of recognition, his delegation reserved its position on the French amendment. Its decision would depend on the exact purport of that amendment in the context of article 7. It would also reserve its position on the Ghanaian amendment (A/C.6/L.672), but wished to state forthwith that it was much more attracted by the solution proposed by Nigeria and the United Kingdom (A/C.6/L.654 and Add.1), which would permit the sending or reception of a special mission without prejudging the question of recognition and would therefore maintain existing practice.

11. Mr. SHARDYKO (Byelorussian Soviet Socialist Republic) agreed with those delegations which believed that article 7 should not be considered in the abstract without reference to actual situations. He would always support the principle that rules of international law were acceptable only to the extent that they were in keeping with the ideals of international life and the purposes and principles of the Charter of the United Nations. Any other approach would violate the rights and interests of the international community.

12. It was most important to strengthen the provisions of a progressive nature which took into account the interests of all States and were likely to develop and promote international relations and thereby contribute to the strengthening of international peace and security. His delegation believed that the rules proposed by the International Law Commission met those requirements. They were an effective legal instrument for solving problems relating to the sending and reception of special missions, whether the States concerned recognized one another or not. They would be particularly valuable now that a number of new States had made their appearance on the international scene after the downfall of the colonial system. The Commission had taken account of the interests and rights not only of all States in general but also of States which had not been recognized. It had quite rightly pointed out that in practice neither the non-existence of diplomatic relations nor non-recognition was a bar to the sending or reception of special missions; and the conclusions it had reached were correct and reasonable. Article 7, in the wording proposed by the Commission, reflected the existing state of international law and gave it the endorsement it deserved.

13. His delegation unreservedly supported the Commission's text, since it believed that the provisions of article 7 should be retained in their entirety and

included in the Convention as rules of international law. If those rules were adopted, they would play a positive part in promoting, expanding and strengthening international relations.

14. With regard to paragraph 2 of article 7, his delegation wished to point out that the United Kingdom-Nigerian amendment (A/C.6/L.654 and Add.1) was contrary to the facts of international life, since it was precisely special missions which enabled a State, which was a subject of international law even if it was not recognized, to participate in international relations.

15. Various theories had been advanced regarding the time at which a State became a subject of international law. His delegation supported the most advanced theory, to the effect that a State achieved that status when other States realized that they were confronted with a new member of the international community. That was what was described as the "legal recognition of a State". Such recognition had a declaratory value, since it formally established the appearance of a new State as the outcome of a historical process. It would be wrong to attempt by arbitrary decisions to interfere with the application of rules already in existence and oppose the inexorable advance of history. Moreover, the question of the international position of a State before recognition had already been raised and had resulted in judgements in Swiss and United States courts which had held that internal legal acts performed by a State before it had been internationally recognized had the force of acts of Governments existing on the international level, even if they had not been recognized. Italian and Austrian jurists had also upheld that opinion, and it was worth recalling that even before 1933 the USSR had been considered an entity in international law by the United States of America, which had not recognized it at the time, and that commercial exchanges had existed between the two countries. The field of application of international law should not be limited to relations between long-established States but should also include relations between such States and new States. Moreover, article 3 of the Pan American Convention on Rights and Duties of States of 26 December 1933<sup>2/</sup> provided that States had obligations even before they were recognized.

16. Since the international community was constantly expanding and contacts between States were becoming more numerous in every field, the adoption of article 7, paragraph 2, could not but contribute to the creation of a more favourable atmosphere in the spirit of the United Nations Charter. For all those reasons, his delegation would not vote in favour of the amendment submitted by Nigeria and the United Kingdom.

17. With regard to the French amendment (A/C.6/L.664) proposing an addition to article 7, paragraph 2, the International Law Commission had quite properly realized that the problem of recognition lay outside the scope of the topic of special missions. He saw no reason why, in connexion with the exchange of special missions, States could not have an opportunity to deal with the problem of recognition and how it might be affected by the exchange in question. Such steps could

<sup>2/</sup> League of Nations, *Treaty Series*, vol. CLXV, 1936, No. 3802.

only help to bring about a relaxation of tension in international relations. For that reason, his delegation would not vote in favour of the French amendment either.

18. Mr. BREWER (Liberia) said there was need in the future Convention for an article dealing with the problems resulting from the non-existence of diplomatic and consular relations and from the fact that certain States did not recognize one another. In his view, the two paragraphs of article 7 should be retained in their present form, since they codified existing practices among States and contributed to the progressive development of international law.

19. His delegation was aware, of course, that those questions involved State responsibility and legal rules governing recognition. But in international law, no single topic could be considered in isolation, without regard to related topics; article 7, paragraph 2, should therefore be retained in order to show clearly the close interrelationship between the question of State responsibility and that of special missions. His delegation would, however, support the French amendment (A/C.6/L.664), which in its view would remedy the defects of that paragraph and obviate the misunderstandings that might arise from it.

20. Mr. BONNEFOY (Chile) felt that article 7, paragraph 1, required no special comment, since the essential idea that diplomatic and consular relations were not necessary for the sending or reception of special missions was quite obvious. Paragraph 2, on the other hand, raised a problem whose solution would have important repercussions on the practice of States with regard to special missions.

21. Two questions were involved: first, whether recognition was a prerequisite for the sending of a special mission, and secondly, if it was not, what the effects would be of the sending or reception of a special mission when one State did not recognize another.

22. On the first point, the answer had to be that recognition was not an essential prerequisite. Quite often, in fact, the sending of a special mission constituted the only possible method for negotiating subsequent recognition. But that did not mean that his delegation approved paragraph 2 in its present form; on the contrary, it considered the paragraph bad because it introduced a contradiction in the principles on which the entire draft Convention was based. What must be realized was that when a State did not recognize another State or entity, it thereby refused to acknowledge that the latter had any legal existence. The sending or reception of a special mission, therefore, could be regarded only in a political context, and the result was incompatible with the provisions of article 1, sub-paragraph (a); in that event the idea of representativeness, which constituted the very foundation of the concept of a special mission, disappeared. The second part of the draft Convention, relating to facilities, privileges and immunities, would then have no logical basis, since any reference to representatives of a State, as in article 31 and 32, for example, would be impossible. In view of those facts, article 7, paragraph 2, obviously could not be retained in its present form.

23. Concerning the second point, namely, the possible effect of the use of special missions between States which did not recognize each other, the Committee might adopt the idea expressed by the French delegation in its amendment (A/C.6/L.664), while omitting any use of the word "State" in order to avoid the difficulties mentioned earlier. That solution, however, was not entirely satisfactory, since recognition was and continued to be a declaration of intention governed solely by the discretionary power of a State. The Convention should not close the door to the possibility that recognition might be effected through the exchange of special missions. There was no justification for the a priori exclusion of the sending of a special mission as a means or method of tacit recognition.

24. For that reason, while the solution recommended by Nigeria and the United Kingdom in their amendment (A/C.6/L.654 and Add.1) was more acceptable to his delegation, he would suggest that paragraph 2 should be replaced by a formula making it clear that the sending and reception of a special mission did not prejudice the question of recognition. In that way it would be possible to take full account of present practice.

25. Mr. PRANDLER (Hungary) said he favoured unreservedly the retention of the present wording of article 7, and particularly paragraph 2 thereof. The International Law Commission had merely confirmed, by giving a legal formulation to, a de facto situation: that in which States did not recognize each other but nevertheless exchanged special missions. Even the United Kingdom Government, whose delegation had proposed the deletion of article 7, paragraph 2, had recognized in its comments addressed to the Secretary-General (see A/7156) that such a situation actually occurred in practice.

26. In his delegation's opinion, two main questions arose. Firstly, did article 7, paragraph 2, fall within the scope of the draft articles? Secondly, what would be the situation of States which sent special missions to States or entities which were not recognized or which received such missions from such States or entities?

27. To the first question, the answer must undoubtedly be in the affirmative, for the paragraph in question merely noted a de facto situation without seeking to prejudice the question of recognition. In paragraph (2) of its commentary, the International Law Commission had rightly considered that recognition was a problem beyond the scope of special missions.

28. With regard to the question of States which sent or received special missions, it was true that the draft articles were designed to facilitate the exchange of special missions between States in the sense in which those missions were understood in article 1 (a). But there was nothing in the provisions of that paragraph which could be interpreted as excluding the possibility of sending special missions to non-recognized States.

29. Finally, he reaffirmed his support for article 7 as it was drafted and reserved the right to comment at a later stage on the various amendments to that article. The Hungarian delegation would study with interest any proposal which would take into account the preoccupations of many delegations by inserting

in article 7 a clause concerning States which did not recognize each other.

30. Mr. KOSTOV (Bulgaria) supported the present wording of article 7, which appeared balanced and in conformity with ideas of which his delegation fully approved. It was a provision of great practical value, in view of the significant role played by special missions in relations between States. It was in reference to that role that his delegation intended to define its position on the various amendments to article 7, paragraph 2, concerning the problem of non-recognition.

31. In the first place, it was firmly opposed to the Nigerian and United Kingdom proposal for the deletion of the paragraph (A/C.6/L.654 and Add.1), for the very reason that it was necessary to recognize a well established practice. Contacts could exist in various fields between States which did not recognize each other and whose relations were far from friendly. Very often, special missions were used to explore the possibility of subsequent recognition or the establishment of diplomatic relations. As the Special Rapporteur had pointed out during the discussions in the International Law Commission, many cases of formal recognition had followed the dispatch of a special mission entrusted with the negotiation of conditions for recognition or the establishment of a modus vivendi with a view to recognition.<sup>3/</sup> Undoubtedly, special missions could often contribute positively towards the creation of conditions for the gradual improvement of relations between States which did not recognize each other. Such action favouring good relations between States was in conformity with one of the aims of the Convention.

32. The Bulgarian delegation could not accept the French amendment (A/C.6/L.664), because the Convention must not deprive States from having recourse to an exchange of special missions as a first step towards recognition. The recognition of a State or a Government by another came exclusively within the sovereignty of that State and the dispatch and reception of a special mission could not involve automatic recognition, if the intention to consider it as such did not exist. States has several means of avoiding such an undesirable interpretation, but cases in which States intended to give to it the significance of tacit recognition must be reserved.

33. Mr. LIANG (China) was glad that, during the debate on article 7, the Committee's attention had been drawn to the views expressed on that article in the International Law Commission. The Commission had studied in great detail the different suggestions which had been submitted to it and he hoped that those considerations would be duly taken into account. Although the problem of non-recognition had not been covered in the 1963 Vienna Convention on Consular Relations, that was an omission which, in his view, should not be perpetuated in the Convention on Special Missions. Recourse to special missions by States which did not recognize each other was a fact of international life which must be acknowledged.

34. His delegation emphasized that the exchange of special missions could be an urgent necessity between two States which had little desire to engage in other relations. In that respect, a State might have three different types of objectives. In the first place, a State might find itself obliged to protect the lives and property of its nationals in a non-recognized State. Secondly, it might wish to intervene with a view to the regulation of shipping and commerce. Those two types of concern were of particular importance in civil wars, as has been shown, for example, in Spain. Thirdly, States might wish to pave the way towards mutual recognition by negotiating the measures to be taken towards that end.

35. Undoubtedly, article 7, paragraph 2, could be improved. His delegation had no objection to the French amendment (A/C.6/L.664) but it would like the adverb "necessarily" to be inserted between the words "shall not imply" and the word "recognition". Such an amendment would conform precisely to the suggestion made by Mr. Reuter during the discussions in the International Law Commission.<sup>4/</sup> His delegation would support the adoption of the present wording of article 7, paragraph 2, subject to subsequent drafting changes.

36. Mr. KESTLER FARNES (Guatemala) noted that in drafting article 7 the International Law Commission had duly taken into account the facts of international life. However, it had not taken any decision on the question of whether the sending or receiving of a special mission prejudged the solution of the problem of recognition, as that problem presented particular difficulties. His delegation felt that rules concerning non-recognition should be established in the field contemplated.

37. His delegation noted that the United Kingdom and Nigerian amendment (A/C.6/L.654 and Add.1), deleting paragraph 2, would have the effect of disregarding the existing situation in the case of non-recognition. It preferred the solution presented by the French delegation in its amendment (A/C.6/L.664), which overcame the difficulties involved. However, the provision in question was designed to be "added" to paragraph 2 and it might legitimately be asked what would happen to it if the paragraph was deleted. In view of the importance of the decision to be taken, his delegation would reserve its position until the vote.

*Mr. Gobbi (Argentina), Vice-Chairman, took the Chair.*

38. Mr. ALBAN (Kuwait) said he favoured the deletion of article 7, paragraph 2, since it did not provide a clear solution to the problem posed by non-recognition.

39. Mr. MOSER (Observer for Switzerland) said he had studied very closely the provisions of article 7 and the proposed amendments. An exchange of special missions might be essential between States which refused to recognize each other. Those special missions might promote international relations as the Romanian representative had pointed out, but they might also be necessary to settle humanitarian questions, a point which his country in particular wished to stress.

<sup>3/</sup> See *Yearbook of the International Law Commission*, 1967, vol. I, 899th meeting, para. 73.

<sup>4/</sup> *Ibid.*, para. 36.

40. In so far as article 7, paragraph 2, would simplify the sending and reception of special missions, it should be maintained. However, it might be well to mention Governments, in order to take current practice into account.

41. Inasmuch as the solution proposed by the French delegation (A/C.6/L.664) might make it easier for States which did not recognize each other to use special missions, it would seem desirable to support its inclusion. One might, however, wonder whether it was not redundant, in view of the necessarily political nature of a decision by one State to recognize another and of the fact that there was always the possibility that States might reach an agreement in each individual case. In that respect, it would be useful to examine, in the light of the debate by the Sixth Committee, whether article 7, paragraph 2, and the new provision proposed by France corresponded to customary law. He thought it would be found that they did. At all events, it would still have to be determined whether the proposed Convention should apply in cases where the status of a State was challenged.

42. In conclusion, he believed he knew to what Swiss court decision the Byelorussian representative had referred in his speech and wished to state that, in his opinion, the speaker had greatly exaggerated its significance.

43. Mr. BEN MESSOUDA (Tunisia) said that his delegation was in favour of maintaining article 7, paragraph 2, with the proviso that any modifications should take international practice into account. The United Kingdom representative had advanced cogent legal arguments in favour of the deletion of that provision, but it had become apparent from the statement of the Nigerian representative (1045th meeting), who had referred to political considerations concerning the sending of mercenaries and bogus special missions, that a deletion might give rise to divergences of views on the very principle in question. That principle was being applied on a wide scale and it had been particularly helpful to colonized countries struggling for liberation.

44. Mr. KHASHBAT (Mongolia) was of the opinion that the Commission had set forth in article 7 the essential principle that neither the non-existence of diplomatic or consular relations nor non-recognition should be a bar to the sending or reception of a special mission. The Commission had the merit of having set forth that fundamental idea with sufficient clarity and flexibility; it was essential that the text of the future Convention should reflect both the contemporary practice of States and the diversity of doctrine on the subject; his delegation believed that the formula reached by the Commission met both requirements perfectly. The Commission had always attempted to avoid extremes in its wording, as it had shown when preparing its draft Declaration on Rights and Duties of States.

45. For those reasons, his delegation did not feel it could support the French amendment (A/C.6/L.664), which was somewhat too unilateral in character and would lead to the ratification of the views of a single school of thought; neither could it support the Nigerian

and United Kingdom amendment (A/C.6/L.654 and Add.1), which was deficient in that it did not reflect contemporary reality, in other words, current trends in recognition.

46. Mr. MOLINA LANDAETA (Venezuela) said that in principle his delegation would like the text drawn up by the Commission to be maintained. Article 7, paragraph 2, should be defined more precisely in view of the diversity of the interpretations it had been given. To that end, any clarifications by the Expert Consultant would be of particular use to the Sixth Committee; he would therefore like to ask him whether: (a) in the opinion of the Commission article 7, paragraph 2, was legally necessary; (b) there was a legal inconsistency between article 7, paragraph 2, and article 1 (a); (c) the question of recognition of Governments could be interpreted as falling within the scope of article 7, paragraph 2; (d) it could be considered that an amendment such as that proposed by France (A/C.6/L.664) went beyond the scope of the topic of special missions; (e) it could be considered that the inclusion in article 7, paragraph 2, of the concept of entity mentioned in the Ghanaian amendment (A/C.6/L.672) might give rise to interpretative difficulties in regard to that paragraph.

47. Mr. CASTREN (Finland) said that his delegation had noted the Ghanaian amendment (A/C.6/L.672) with great interest. It was willing to support that amendment in so far as it proposed to add a phrase to the end of paragraph 2, a proposal similar to that contained in the French amendment (A/C.6/L.664); however, his delegation could not accept the proposal to add the term "entity", for the reasons set forth by the Italian representative; the draft articles dealt only with relations between States, whereas the Ghanaian amendment would have the effect of extending its scope to other entities.

48. Mr. GOTLIEB (Canada) was of the opinion that the question posed by article 7, which was a very interesting one, went beyond the relatively simple question of States which wished to send special missions to or receive special missions from another State, even though they did not recognize each other. Paragraph 1 of the existing text presented no difficulty, as he felt it was a clear and desirable rule. The principle underlying paragraph 2 was a commendable one since it favoured international intercourse; however, he was troubled by its ambiguity. One might well ask what its relationship was to article 1 (a); the Chilean representative had demonstrated the possible contradictions between that paragraph and the very definition of a special mission. If paragraph 2 was simply descriptive, it scarcely added anything to the draft; on the other hand, if it purported to lay down a rule which provided that sending a special mission did not constitute recognition, the paragraph seemed somewhat incompatible with paragraph (2) of the commentary on article 7. His delegation therefore did not feel it was necessary to maintain paragraph 2, the deletion of which would not inhibit recognition, which depended only on the parties' intentions. If, however, the paragraph was maintained, its purpose should be clarified by using a formula similar to that contained in the French amendment (A/C.6/L.664).

49. Mr. DABIRI (Iran) said that his delegation fully agreed with the text of article 7, paragraph 1, prepared by the Commission. It was still convinced of the value of the text of paragraph 2, but agreed that its wording was unsatisfactory. Efforts had been made to improve it, and had already helped to make the problem clearer; his delegation therefore expressed the hope that it would be possible to draw up a clear text satisfying all delegations.

50. Mr. PRANDLER (Hungary) asked the representative of the Secretary-General whether the Secretariat intended to produce a document summarizing the

results already obtained by the Sixth Committee, in order to simplify its work.

51. Mr. STAVROPOULOS (Legal Counsel) observed that delegations could refer to documents of the Drafting Committee, whose decisions would be published as Sixth Committee documents; the Secretariat nevertheless proposed to publish at a later date a document summarizing the work of the Sixth Committee; the publication of such a document would be premature at the present time.

*The meeting rose at 6 p.m.*