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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. KLAFKOWSKI (Poland) said that the commen-  
tary by the International Law Commission on its draft  
of article 7 called for certain comments.

2. Paragraph (1) contained no reference to the  
recognition of States and seemed thereby to equate  
recognition with the existence of diplomatic relations.  
However—though that also was not mentioned—the  
possibility must be taken into account that diplomatic  
relations between States might be suspended or broken  
and thus cease to exist even though the States still  
recognized one another. Paragraph (2) referred to  
non-recognition between States, which was a different  
proposition. The Commission had said that that prob-  
lem lay outside the scope of the topic of special  
missions. In that connexion, he wished to make the  
following observations: in the first place, diplomatic  
relations were of secondary importance compared with  
recognition, and a State could exist without being  
recognized; moreover, although recognition generally  
preceded the establishment of diplomatic relations, the  
reverse could happen, for example where there was  
*de facto* recognition; secondly, the wording of article 7,  
paragraph 2, was compatible with accepted practice—  
which alone mattered in the context—and that made  
recognition a discretionary act on the part of each  
individual State; thirdly, in view of the differences  
of opinion at both the theoretical and the practical  
level which had been brought to light by the debate,  
it would not be feasible to settle the question referred  
to in paragraph (2) of the commentary by means of a  
vote in the Sixth Committee. It was worth noting,  
incidentally, that the Commission had itself abandoned  
the problem of the recognition of States which it had  
first taken up in its draft Declaration on Rights and  
Duties of States.

3. In the light of those considerations, his delegation  
was in favour of retaining article 7, paragraph 2, in  
its present form.

4. Mr. CHAMMAS (Lebanon) considered that when  
two States had not recognized each other the sending  
of a special mission by one to the other involved some  
degree of recognition. However, opinions were divided  
on that point in the Sixth Committee. The solution  
proposed by the International Law Commission, namely  
to append to article 7, paragraph 2, a commentary  
stating that the problem of recognition between States  
lay outside the scope of the topic of special missions,  
was hardly designed to smooth away the difficulties.

5. For that reason the United Kingdom and Nigerian  
amendment to delete paragraph 2 (A/C.6/L.654 and  
Add.1) had considerable merit, since it allowed States  
which did not recognize one another but were thinking  
of establishing mutual contacts to decide for them-  
selves whether or not those contacts involved recog-  
nition. At all events the members of the Sixth Commit-  
tee were invested with full powers for the purposes  
of drafting the future Convention, and at the present  
stage the scruples which the International Law Com-  
mission had felt about taking a decision on the problem  
were no longer relevant. The Committee could cer-  
tainly decide to retain paragraph 2, perhaps with the  
addition of the amendment submitted by France  
(A/C.6/L.664), but to do so, in the opinion of his dele-  
gation, would risk prejudging governmental decisions.  
He hoped the Committee might find grounds for  
agreement so that the debate would not be prolonged  
indefinitely. The Chairman could perhaps suggest  
a suitable procedure to that end.

6. Mr. MOLINA LANDAETA (Venezuela) said that  
it would be useful if the Expert Consultant could reply  
to the questions he had put to him at the 1046th  
meeting, since that could facilitate the negotiations  
which were now being carried on with a view to  
establishing a generally acceptable text for article 7.

7. Mr. BARTOS (Expert Consultant) recalled that the  
first question asked by the representative of Venezuela  
had been whether in the opinion of the International Law  
Commission, article 7, paragraph 2, was legally  
necessary. The Commission had felt that paragraph 2  
was indeed legally necessary to dispel any possible  
doubts as to whether States which had no diplomatic  
or consular relations and did not recognize one another  
could conclude an agreement of some kind on the  
exchange of special missions. The Commission had  
ascertained that in practice the States concerned  
maintained a link which took the form of exchanges  
of special missions, and it had therefore judged it  
necessary to include in the draft an explicit statement  
to the effect that those States could enter into relations  
by means of special missions and that such relations  
could lead to the establishment of diplomatic and  
consular relations; furthermore, the Commission had  
decided that there was reason to reject the proposition,

which in its view was incorrect, that if States entered into relations by exchanging special missions, they recognized one another ipso facto; it was easier for States without formal relations to make contact and exchange special missions if all presumption of recognition was set aside.

8. He had been asked secondly whether there was a legal inconsistency between article 7, paragraph 2, and article 1 (a). He could see no such contradiction between the two provisions. The Commission had included paragraph 2 in its draft in order to show that it was not necessary for States to maintain diplomatic or consular relations and to recognize one another in order to exchange special missions. In that connexion, it had studied the period between the two World Wars and more especially the practices of the European States with respect to the Soviet Union; that study had shown that relations existed even in the absence of recognition. Moreover, jurisprudence and doctrine revealed that a kind of de facto recognition existed even if one of the parties denied it—based on what the special missions did or on particular agreements with a fixed duration and purpose. That was why the Commission had not decided the question whether the sending or reception of a special mission prejudged the solution of the problem of recognition.

9. The third question he had been asked was whether the question of recognition of Governments could be interpreted as falling within the scope of article 7, paragraph 2. The Commission had declined to discuss that question and had limited itself to studying the recognition of States; admittedly, the question of recognition of Governments was in practice often more important than the question of the recognition of States; moreover, it arose more frequently, notably for example with regard to Governments which had set themselves up after a revolution or a coup d'état. The Commission had considered it to be a political rather than a legal question, although it had repercussions at the legal level, and for that reason had not discussed it.

10. To the Venezuelan representative's fourth question—namely, whether he thought that a proposal such as the French amendment (A/C.6/L.664), lay outside the scope of the topic of special missions—the answer was that he did not. The French amendment was certainly designed to regulate the question of special missions.

11. In answer to the last question—whether he thought that the inclusion in article 7, paragraph 2, of the concept of entity referred to in the Ghanaian amendment (A/C.6/L.672) might give rise to problems of interpretation regarding that paragraph—he pointed out that the International Law Commission had not considered the problem of entities other than States. By deciding to exclude from its study the question of recognition, it had at the same time ruled out the possibility of considering a definition of entities. On the other hand, it had had occasion to discuss that subject in the past. In 1965, the Swedish Government had raised the question of the sending or reception of special missions between belligerents. The Commission had avoided giving a ruling on that question, on the grounds that the only possible relations between belligerents were governed by jus belli, a subject

which was outside its field. It had taken the view that relations between States which did not recognize each other could be useful and could in fact lead to recognition. He was thinking, for example, of the contacts established during wars of national liberation. However, the Commission had declined to discuss the nature of liberation movements during their struggle for freedom. It had originally intended to include a reference to the subject in its commentary but had later changed its mind, since it had thought there was not likely to be any sizable majority of opinion on a question with so many political implications. The Commission was, of course, aware that questions of that kind existed; but, except in cases where opinion was virtually unanimous, it was chary of moving outside the field of conventional law. In view of its responsibilities towards legal experts throughout the world, it sometimes believed that it was better not to adopt certain ideas, even if they were likely to contribute to the progressive development of international law. For all those reasons, the Commission had decided not to use any concept other than the concept of State, and had left aside the concept of "entities" or "State-like organization" which did not seem to command enough support. It had decided to confine itself to the more conventional concepts accepted by the international community as a whole.

12. Mr. OSTROVSKY (Union of Soviet Socialist Republics) said that his delegation attached exceptional importance to article 7. The subject it dealt with was so fundamental that any decision taken without due consideration might impair the value of the entire draft Convention, which should faithfully reflect the standpoint of the vast majority of States. Experience showed that international law conventions ratified only by a small number of States were of little value.

13. The most striking feature of the statements on article 7 thus far was that the speakers seemed to be concerned only with actual situations in specific parts of the world. That method was open to criticism, since it would not lead to positive conclusions or facilitate the drafting of provisions of a general nature covering the largest possible number of cases.

14. For a correct approach to article 7, it was essential first to refer to Article 13 of the Charter of the United Nations, which called for the progressive development and codification of international law. The inclusion of article 7, paragraph 2, which in its present form was perfectly relevant, was a forward step in the development of international law. In the present-day world, States were constantly sending or receiving special missions, even where the States concerned did not recognize one another. The practice helped to improve and expand international relations and to ease international tension.

15. One objection to paragraph 2 had been that its provisions were incompatible with those of article 1 (a). In his delegation's view, that objection was groundless, since paragraph 2 merely reflected the facts of international life and took note of an objective situation which existed, whether any one liked it or not. To deny that fact was to introduce unwarranted and subjective elements into the discussion. Paragraph 2 did not in any way prejudice the question of recog-

dition, as the International Law Commission had correctly pointed out in its commentary.

16. There were a number of amendments to the Commission's draft. The French delegation's text (A/C.6/L.664), which stated that the reception of a special mission "shall not imply recognition", was too categorical. The States concerned with special missions were, primarily, the sending State and the receiving State. Even if they did not recognize one another, they were quite free to reach an understanding on the significance to be attached to the sending or receiving of a special mission, and to agree that the exchange of missions might or might not imply recognition or be the prelude to recognition in due course. Why, then, interfere with the wishes of sovereign States by trying to determine in advance the consequences of an exchange of special missions?

17. The wording of the Ghanaian proposal (A/C.6/L.672) was less rigid than that of the French amendment, but States would still have to decide either to recognize one another or not to do so. That was tantamount to saying that the only colours in the spectrum were black and white and ignoring the wide range of colours and shades.

18. In the case in point, the question was so complex that any wording, however flexible and felicitous, might impair the draft Convention as a whole. But, even if a new text were produced covering all cases, another problem would then arise, namely, the nature of the recognition involved. Would it be *de jure* recognition? Certainly not, because *de jure* recognition was accorded by act, a diplomatic instrument in good and due form. Would it, then, be *de facto* recognition? It would not be that either, since *de facto* recognition, which had important legal effects, was sometimes accorded by a special document or at least an agreement. It was, therefore, impossible to say in advance that the exchange of special missions constituted recognition of one state by another.

19. In any case, the word "recognition" did not have any precise meaning; and if the French amendment were adopted, article 1 would have to include an exact definition of the term. Agreement on a single definition would, obviously, be very difficult to reach.

20. The concept of "entity" which was mentioned in the Ghanaian amendment was difficult to define, and was indeed outside the scope of the draft Convention, which was designed solely to regulate relations between States.

21. The United Kingdom and Nigerian amendment (A/C.6/L.654 and Add.1) was based on the argument that the deletion of paragraph 2 of article 7 would not operate to the disadvantage of States which did not recognize one another, since they would still be able to exchange special missions. In his delegation's view, that argument was debatable, since the deletion of paragraph 2 would upset the work of the International Law Commission, which in that particular field had contributed to the progressive development of law. Furthermore, a State which was not recognized might refrain from sending a special mission if it had no assurance that the mission would enjoy certain privileges and immunities. In short, far from contri-

buting to the progressive development of international law, the deletion of paragraph 2 would interfere with existing practice and impair the spirit of co-operation between States.

22. The problem should, essentially, be considered from the standpoint of the interests of all States Members of the international community. The sending and reception of special missions were matters of considerable importance for all States, whether or not they maintained diplomatic and consular relations. As a result of the decolonization process, many new States were now using special missions to establish contact with other States, and their action should be given some basis in international law.

23. For all those reasons, the USSR delegation felt that article 7, in its present form, made a major contribution to the progressive development of international law and that it dealt in a positive manner with the question of the sending of special missions. It would not support the proposed amendments, which detracted from, rather than improved, the provisions of article 7.

24. Mr. ESPEJO (Philippines) thought the provisions of article 7, paragraph 1, acceptable. In connexion with the problem of recognition posed by paragraph 2, the following different situations might arise: the sending and receiving States might not recognize each other; the sending State might not recognize the receiving State, or the receiving State might not recognize the sending State; lastly, other members of the international community might have accorded recognition to both the sending and the receiving States, or to only one of them.

25. It had been said that the existence of a State should not be regarded as depending upon its recognition but on whether in fact it fulfilled the conditions (of statehood as laid down in the definition of a State) which created a duty for recognition. Did that mean that, in the above-mentioned cases, the sending State and the receiving State, or one of them, were States whose existence had been "conceded" but which had not yet been recognized as such? That question showed that there was such a stage in the course of the evolution of a political body from an indeterminate entity to recognized statehood. His delegation understood the phrase "a State which it does not recognize" in that sense and therefore supported the retention of article 7, paragraph 2, but would welcome any other formulation which might find favour with the Sixth Committee.

26. It would support in principle the amendment submitted by the French delegation (A/C.6/L.664), although it hoped that the wording would be improved and made more flexible. However, it could not support the Ghanaian amendment (A/C.6/L.672); firstly, the use of the word "entity" unduly widened the scope of article 1 (a) and article 2, and secondly, it was difficult to determine the precise meaning of the word, which could apply both to a "belligerent community" or to an "insurgent Government".

27. The CHAIRMAN announced that the Secretary-General was going to make a statement to the General Assembly concerning the state of health of its President, Mr. Arenales. Moreover, as he gathered that the

members of the Committee wished to discuss a new amendment to article 7 which had just been formulated, he suggested that the meeting should be suspended.

*The meeting was suspended at 5.10 p.m. and resumed at 6 p.m.*

28. The CHAIRMAN expressed the hope that the state of health of the President of the General Assembly would improve rapidly and asked the representative of Guatemala to convey his wishes for a speedy recovery to Mr. Arenales.

29. Mr. KESTLER FARNÉS (Guatemala) thanked the Chairman for his good wishes and assured him that his delegation would convey them to the President of the General Assembly.

30. Mr. ALVAREZ TABÍO (Cuba) said that his delegation had no objection regarding the substance of article 7 and that it agreed with the International Law Commission that the sending of special missions by States did not prejudice eventual recognition. However, it could not help feeling that the question of the non-existence of diplomatic relations and the question of non-recognition had not been given equal weight. It appeared from article 7, paragraph 2, that an effort had been made to establish inequality between States: whereas the commentary by the International Law Commission unequivocally recognized the principle of the sovereign equality of States, article 7, paragraph 2, implicitly distinguished between States which did not recognize others and those which were not recognized.

31. Therefore, while his delegation did not endorse the proposal to delete paragraph 2, it hoped that the Drafting Committee would reword the paragraph to ensure that the principle of the sovereign equality of States was retained. Since non-recognition was not a bar to the sending of special missions, it would seem logical that new types of international relations should be developed that were no longer based on outmoded practices entailing subordination and subservience.

32. His delegation was also concerned at the absence of any reference to States in paragraph 1. The omission was particularly unfortunate since the expression "special mission" had not yet been precisely defined. The fact that reference had been made to States or entities would seem to suggest that States which did not maintain diplomatic relations were looked upon as different, inferior entities, as if the existence of such relations was a determining factor in the concept of a State. His delegation therefore hoped that the wording of article 7 would be improved, so as to safeguard the principle of the sovereign equality of States.

33. Mr. BEN LAMIN (Libya) endorsed the wording of article 7, paragraph 1, but favoured the deletion of paragraph 2 because it was not appropriate that the draft articles should deal at all with the problem of the recognition of States. Moreover, the provision in paragraph 2 would no doubt affect the application of article 19 on the right of special missions to use the flag and emblem of the sending State and might also run counter to article 1 (a).

34. His delegation could not support the amendments of France (A/C.6/L.664) and Ghana (A/C.6/L.672), since they implied the retention of paragraph 2.

35. Mr. REIS (United States of America) also favoured the deletion of paragraph 2, since that paragraph would make it more difficult for States which did not recognize each other to exchange views. The Sixth Committee would merely be complicating its work by seeking to retain that provision, which the International Law Commission had inopportunistically included in its draft.

36. Mr. BAYONA ORTIZ (Colombia) felt that article 7, paragraph 2, should be retained, as it represented an element in the progressive development of international law. The inclusion of that provision would permit a State sending a special mission to a State which it did not recognize to take into account the fact that such action did not imply recognition.

37. However, in view of the divergent views in the Committee, Colombia, together with other Latin American delegations, had sought a common ground by proposing a further text based on elements of the amendments of France (A/C.6/L.664) and Ghana (A/C.6/L.672) and on the observations made by the Chilean delegation at the 1046th meeting.

38. Mr. EL REEDY (United Arab Republic) said that his delegation hoped for the deletion of article 7, paragraph 2, both to avoid the difficulties raised by the problem of recognition of States and to eliminate arguments which might arise over the proposed amendments to that provision. His delegation therefore endorsed the Nigerian and United Kingdom amendment (A/C.6/L.654 and Add.1).

39. Mr. OGUNDERE (Nigeria) said that his delegation, which was one of the sponsors of the amendment to delete paragraph 2, wished to note that while the text involved was an exercise in legal brinkmanship, that did not mean that the problem posed by the recognition of States should not be studied more thoroughly in the future. In the present circumstances, however, the amendments of France (A/C.6/L.664) and Ghana (A/C.6/L.672) were unacceptable since, as the Soviet Union representative had pointed out, they introduced too many nuances in a situation which, for the purposes of the future Convention, should remain clear-cut.

*The meeting rose at 6.25 p.m.*