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Draft Convention on Special Missions  
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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.664/Rev.1, A/C.6/L.672, A/C.6/L.672/  
Rev.1).

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

1. Mrs. d'HAUSSY (France), introducing a revision  
(A/C.6/L.664/Rev.1) of her delegation's amendment,  
said that her delegation now proposed that paragraph  
2 of the article should be drafted as follows:

"A State may send a special mission to a State,  
or receive one from a State, which it does not  
recognize. The sending or reception of a special  
mission in such circumstances does not imply  
recognition unless the contrary intention has been  
clearly expressed."

In other words, the principle would be that when  
a State received a special mission from an entity  
that it did not recognize as a State, or sent a special  
mission to such an entity, it did not thereby recognize  
that entity. Recognition would be extended only if a  
State which previously had not wished to grant  
recognition clearly expressed its intention, upon  
sending or receiving a special mission, to attribute  
the force of recognition to those acts.

2. In the discussion of article 7, a great majority  
of the speakers, if not all, had considered that a  
State could send a special mission to an entity it  
did not recognize as a State, and could receive  
a special mission from such an entity. Thus, paragraph  
2 of article 7 of the International Law Commission's  
draft corresponded to one of the realities of interna-  
tional life, and its deletion would be regrettable. Some  
delegations had expressed concern that article 7,  
paragraph 2, might be incompatible with article 1 (a).  
Her delegation thought that problem could be solved  
when the Committee considered article 1 (a), possibly  
by the introduction of a reservation in respect of  
article 7, paragraph 2.

3. The purpose of her delegation's original amend-  
ment (A/C.6/L.664), which stated that the sending  
of special missions to or reception from unrecognized  
States did not imply recognition, had been to avoid  
leaving open a question which might give rise to  
discussion. Her delegation had noted during the  
discussion and consultations that, while not all delega-  
tions fully shared its view, there was very general  
agreement that if the State concerned did not itself  
regard the sending or reception of the special mission  
as recognition, there was no recognition. Moreover,  
her delegation had been impressed by comments  
that its amendment did not leave enough discretion  
to States. Its revised text (A/C.6/L.664/Rev.1) should  
meet all those objections: it would settle the question  
left without an explicit answer by paragraph 2 of the  
Commission's draft, it would permit States to grant  
recognition, if they so wished, upon sending a special  
mission to or receiving one from a State that was  
not recognized, and it would avoid erroneous inter-  
pretations of the intentions of States.

4. Mr. DADZIE (Ghana) said that despite intensive  
efforts in informal consultations, it had proved impos-  
sible to agree on a text which would meet the require-  
ments of the great majority of delegations. In those  
circumstances, his delegation had decided to revise  
its amendment (A/C.6/L.672). In that amendment  
it had juxtaposed the words "State" and "entity"  
*eiusdem generis* in order to cover not only States  
but also those entities which were considered States  
by some States and denied statehood by others. In  
view of the apprehensions expressed by some delega-  
tions, and in a spirit of compromise and co-operation,  
his delegation had decided to delete the words "or to an  
entity" in the first line, and the words "or an entity"  
in the second line of its amendment. Some day,  
however, an apt description of those entities would  
have to be found through the progressive development  
of international law. In view of certain difficulties  
which some delegations had with the words "agreed  
between" his delegation had decided to substitute the  
words "intended by". Those words would cover all  
manner of cases in which an understanding had been  
reached between the parties, and would not require  
formal agreement.

5. His delegation's revised amendment (A/C.6/  
L.672/Rev.1) would not prejudice the law of State  
recognition, but rather would provide a guideline for  
those who would in due course do the work of codifica-  
tion on that topic. Nor would it interfere in any way  
with the privileges and immunities which a special  
mission of a State not recognized might enjoy, since  
appropriate provisions might be included in another  
part of the draft Convention to cover such matters.

6. Mr. PRANDLER (Hungary) said that his delegation had taken part in the informal consultations and was not satisfied with any of the amendments submitted; it accordingly proposed a sub-amendment<sup>1/</sup> to the revised French amendment (A/C.6/L.664/Rev.1), namely, to add the words "without prejudice to the question of recognition" to the first sentence, and to delete the second sentence. The idea was to retain the International Law Commission's draft of paragraph 2 and to add a clear statement of the view expressed in the Commission's commentary.

7. The CHAIRMAN said that the Hungarian proposal was not a sub-amendment to the revised French amendment, but rather an amendment to the International Law Commission's text of article 7.

8. Mr. OSTROVSKY (Union of Soviet Socialist Republics) reserved his delegation's right to submit sub-amendments to the revised French amendment when the text was available in Russian, because he believed that its adoption would make article 7, and the draft Convention as a whole, unacceptable.

9. Since the Hungarian proposal substituted a phrase for the second sentence of the revised French amendment, it was clearly a sub-amendment to that amendment.

10. The CHAIRMAN said that the Hungarian amendment merely added some words to the International Law Commission's text of paragraph 2 of article 7, and was therefore an amendment to that text.

11. Mr. SAHOVIC (Yugoslavia) said that the discussion had shown that there was general agreement on the idea expressed by the International Law Commission in paragraph 2. His delegation agreed that a sentence should be added to make clear the framework within which the special missions referred to in that text would be sent. The three proposals submitted at the present meeting differed, not in substance, but only in drafting. The Committee should recognize that fact and submit the three proposals to the Drafting Committee, whose task was to find words to express ideas on which there was basic agreement.

12. Mr. RATTANSEY (United Republic of Tanzania) said that, in his view, the Hungarian proposal constituted a new amendment to the International Law Commission's text rather than a sub-amendment to the revised French amendment.

13. His delegation had originally believed that the inclusion of paragraph 2 would be a step forward in the progressive development of international law. In customary international practice, the sending of a special mission to a State implied the existence of sympathetic relations between the sending and the receiving States, and it would be desirable to codify the principle that such an act did not necessarily imply recognition. From the legal point of view, it would be a retrograde step to allow ambiguity to remain on that point.

14. The United Kingdom-Nigerian amendment (A/C.6/L.654 and Add.1) attempted to solve the problem in a rather ostrich-like manner by avoiding any explicit reference to recognition. The Hungarian

amendment and the revised French and Ghanaian amendments seemed intended to protect the receiving State from the risk that the sending State might regard the sending of a special mission as a preliminary to recognition. Most of the States represented on the Committee would probably more often be in the position of the receiving State and must protect their own interests.

15. He suggested that if the United Kingdom delegation would agree, the other three amendments which—as the Yugoslav representative had noted—were substantially the same in meaning, and which tried to deal with the question of recognition rather than ignore it, should be submitted to the Drafting Committee. A compromise text might then be devised, incorporating all three amendments so as to satisfy those delegations that wanted it to be made quite clear that the receiving of a special mission did not imply recognition. That problem was of great concern to the developing countries. At present they received special missions and accorded them, under customary international law, such privileges and immunities as they saw fit. However, if the relevant norms of international law had been codified in a convention and they acceded to that convention, they would be bound by its provisions.

16. Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) said that the basic principle underlying the International Law Commission's text of article 7, namely that the existence of diplomatic or consular relations was not necessary for the sending or reception of a special mission and that non-recognition did not constitute a bar to the sending of a special mission, seemed acceptable to most delegations. The Ukrainian delegation supported the Commission's text, because it realistically reflected contemporary international practice in the use of the institution of special missions.

17. The French amendment, in both its original and its revised form, went beyond the scope of the draft articles and introduced a new factor by attempting to make provision for the possible consequences of the sending of a special mission. It failed to take account of the fact that in current international practice the sending and receiving of a special mission sometimes promoted or even involved recognition. The use of special missions implied a certain level of recognition, with regard to a specific issue at least. His delegation's basic objection to the French amendment was that it was not the Committee's task at the present time to consider the possible consequences of the use of special missions, which might be varied and complex and which could not be considered without a thorough study of practical instances. Under rule 131 of the rules of procedure of the General Assembly, his delegation wished to sub-amend the revised French amendment, so that the second sentence would read: "The sending or receiving of special missions in such cases does not prejudice the question of recognition."<sup>2/</sup>

18. His delegation could not support the revised Ghanaian amendment for the same reason that it

<sup>1/</sup> Subsequently circulated as document A/C.6/L.675

<sup>2/</sup> This sub-amendment was subsequently circulated as document A/C.6/L.676.

found the revised French amendment unacceptable. Although the Ghanaian wording was more flexible, it was not sufficiently comprehensive, and its very flexibility would raise problems. His delegation could not agree with the arguments advanced in favour of the United Kingdom-Nigerian amendment. Nevertheless, he agreed that that amendment, if adopted, might be interpreted as not ruling out the possibility of using the institution of special missions in the case of non-recognition.

19. Mr. SINCLAIR (United Kingdom) said that, in introducing the United Kingdom and Nigerian amendment (A/C.6/L.654 and Add.1), he had stated (1045th meeting) that his delegation fully accepted the principle, on which there seemed to be unanimous agreement, that non-recognition should not constitute a bar to the sending of a special mission. However, his delegation was not convinced that it was either necessary, appropriate or desirable to include in the Convention an express provision to that effect, although it sympathized with the Tanzanian view that its inclusion might be a move towards the progressive development of international law. Since the United Kingdom-Nigerian amendment in no way ruled out the sending of special missions in the case of non-recognition, that was not an issue which should divide the Committee.

20. The inclusion of the second paragraph of article 7 would imply that the same treatment should be accorded to special missions from non-recognized States as to those from recognized States and would require the insertion in subsequent articles of provisions governing exceptional cases, which would be out of place in the Convention.

21. The question whether the use of special missions in the case of non-recognition did or did not imply recognition was a delicate issue, and it was not the Committee's task at the present time to codify the international legal norms governing recognition. He disagreed with the Yugoslav view that the other amendments to the text involved only questions of drafting. In his delegation's opinion, they reflected differences of substance. He stressed that the amendment of Nigeria and the United Kingdom was a compromise proposal which, if adopted, would remove the need for the Sixth Committee to engage in a lengthy debate on the implications of the sending of special missions in the case of non-recognition. He therefore urged the Committee to adopt it.

22. The CHAIRMAN suggested that the Committee should vote on the United Kingdom-Nigerian amendment (A/C.6/L.654 and Add.1), the revised French amendment (A/C.6/L.664/Rev.1) and the Ukrainian sub-amendment thereto, the revised Ghanaian amendment (A/C.6/L.672/Rev.1), and the Hungarian amendment in that order.

23. Mr. OSTROVSKY (Union of Soviet Socialist Republics) said that his delegation had agreed to vote on the amendments to article 2 before the Russian texts had been distributed on the express understanding that it would not constitute a precedent. As the United Kingdom representative had said, the present issue was a complex and delicate one with political ramifications. It was therefore important that the

Russian text of all amendments should be available before the Committee voted on them.

24. The CHAIRMAN suggested that in view of the objection of the USSR representative, the meeting should be adjourned. He appealed to the sponsors of amendments to try to draft a compromise text which would be acceptable to the majority of delegations.

25. Mr. CHAMMAS (Lebanon), supported by Mr. ROSENSTOCK (United States of America) pointed out that if the United Kingdom-Nigerian amendment—the text of which had already been distributed in all the official languages used in the Committee—was approved, there would be no need to vote on the other amendments. He therefore moved that that amendment be put to the vote and that, if it was not approved, the meeting should be suspended until the time of the Committee's next meeting, when the other texts would have been distributed in all the appropriate languages.

26. Mr. OSTROVSKY (Union of Soviet Socialist Republics) said he had no objection to the Lebanese proposal.

27. Mr. DADZIE (Ghana) said that it would be irregular for the Committee to vote on only one of the proposals before it, deferring decisions on the others until the next meeting. Such a precedent should not be set.

28. Mr. CHAMMAS (Lebanon) explained that he had specified, in making his proposal, that the meeting should be suspended, not adjourned. If the majority of delegations voted in favour of the deletion of the second paragraph of article 7, there would be no need to vote on the other proposals.

29. Mr. DELEAU (France) supported the remarks made by the Ghanaian representative. The voting should not be divided between two meetings, nor should delegations have to vote on texts which were not available in all working languages.

30. The CHAIRMAN suggested that it would be in order to vote on the United Kingdom-Nigerian amendment, the text of which had long been available. If that amendment was rejected, the Committee would, at its next meeting, consider the other proposals before it.

31. Mr. DELEAU (France) said he was not convinced that adoption of the United Kingdom-Nigerian proposal would ipso facto entail rejection of the others. All it would imply was that the second sentence of the International Law Commission's draft had been deleted. It was quite possible that the Committee would wish to express its opinion on the ideas contained in the amendments or sub-amendments submitted by France, Ghana, Hungary and the Ukrainian Soviet Socialist Republic.

32. Mr. OMBERE (Kenya) said that the Committee should decide whether adoption of the United Kingdom-Nigerian proposal would necessarily imply rejection of the others and, if so, under which rule of procedure.

33. Mr. CHAMMAS (Lebanon) said that the Committee had agreed to work on the basis of the International

Law Commission's text. Adoption of the United Kingdom-Nigerian proposal would result in the deletion of the second paragraph of article 7 and, consequently, in the rejection of any proposals to amend that paragraph.

34. He formally proposed, therefore, that, in order to expedite its work, the Committee should vote immediately on the United Kingdom-Nigerian proposal.

35. Sir Kenneth BAILEY (Australia) said it would be interesting to learn the views of the United Kingdom representative on the procedural question under discussion. It would seem undesirable to vote on any proposal until the texts of all proposals before the Committee were available. Some of those proposals were designed to answer the question of recognition and others to leave that question open. The latter could be done by adopting either the United Kingdom-Nigeria proposal or the Hungarian proposal. His delegation would like time to weigh those amendments against each other.

36. Mr. SINCLAIR (United Kingdom) said that there would seem to be no difficulty in proceeding immediately to vote on the amendment submitted by his own and the Nigerian delegation. In the light of that vote the Committee could decide what further action, if any, was required on the other proposals before it.

37. The CHAIRMAN invited the Committee to vote on the amendment submitted by the United Kingdom and Nigerian delegations.

38. Mr. CHAMMAS (Lebanon) said that, in order to facilitate the Committee's work, he would withdraw his delegation's proposal.

39. Mr. ROSENSTOCK (United States of America) suggested that, as the Chairman had already invited the Committee to vote, the gesture of the Lebanese representative could not be effective.

40. Mr. RATTANSEY (United Republic of Tanzania), referring to rule 82 of the rules of procedure, considered that it was in order for the Lebanese representative to withdraw his proposal.

41. The CHAIRMAN said that, in inviting the Committee to vote, he had acted on his own initiative, not on the Lebanese proposal.

42. Mr. DELEAU (France) and Mr. DADZIE (Ghana) entered reservations on the fact that the Committee was not voting at the same meeting on all the proposals before it on article 7.

43. The CHAIRMAN put to the vote the amendment submitted by the United Kingdom and Nigeria (A/C.6/L.654 and Add.1).

*At the request of the Venezuelan representative, the vote was taken by roll-call.*

*Ethiopia, having been drawn by lot by the Chairman, was called upon to vote first.*

*In favour:* Greece, Iraq, Italy, Japan, Lebanon, Libya, Luxembourg, Mongolia, Morocco, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Poland, Portugal, Sudan, Sweden, Syria, Thailand, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Algeria, Australia, Belgium, Brazil, Bulgaria, Burundi, Byelorussian Soviet Socialist Republic, Canada, Ceylon, Cyprus, Czechoslovakia, Denmark, Ecuador.

*Against:* France, Ghana, Guatemala, Guyana, Honduras, Indonesia, Jamaica, Kenya, Liberia, Philippines, Rwanda, South Africa, Spain, Trinidad and Tobago, Uruguay, Yugoslavia, Barbados, Chile.

*Abstaining:* Ethiopia, Finland, Gabon, Haiti, Hungary, India, Iran, Ireland, Israel, Ivory Coast, Mali, Mexico, Niger, Peru, Romania, Senegal, Tunisia, Turkey, United Republic of Tanzania, Venezuela, Zambia, Afghanistan, Argentina, Burma, Cameroon, Chad, Colombia, Congo (Democratic Republic of), Costa Rica, Cuba, Dahomey.

*The amendment was approved by 38 votes to 18, with 31 abstentions.*

*The meeting rose at 1.30 p.m.*