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CONTENTS

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/Rev.1, A/C.6/L.672/Rev.1, A/C.6/L.675, A/C.6/L.676, A/C.6/L.665, A/C.6/L.668, A/C.6/L.670, A/C.6/L.671/Rev.1)

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

1. Mr. DADZIE (Ghana) said that at the 1048th meeting, by voting on one proposal and deferring decisions on other proposals on the same article until a later meeting, the Sixth Committee had adopted an unusual procedure against which his delegation wished to register a protest. It was to be hoped that there would be no need to adopt that procedure in the Committee again.

2. The purpose of the revised amendment submitted by his delegation (A/C.6/L.672/Rev.1) had been to replace paragraph 2 of the International Law Commission's text of article 7 by another text. Hence, the adoption of the United Kingdom-Nigerian proposal (A/C.6/L.654 and Add.1) did not satisfy his delegation, nor did it imply rejection of the other proposals before the Committee. One of the distinguishing features of the Ghanaian proposal was that it sought to determine the intention of the parties concerned on the question of recognition.

3. As his delegation did not wish to obstruct the Committee's work, it would merely reserve its position on the matter and withdraw its amendment, without prejudice to any other step it might deem necessary to take elsewhere in the future.

4. Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) said that in view of the result of the vote on the United Kingdom-Nigerian proposal his delegation withdrew its amendment (A/C.6/L.676).

5. Mr. PRANDLER (Hungary) said that in view of the result of the vote taken at the 1048th meeting, his delegation would not insist that its amendment (A/C.6/L.675) be put to the vote.

6. Mr. DELEAU (France) said his delegation considered that the Convention should refer to the receiving and sending of special missions by States which did not recognize each other. It had therefore voted against the deletion of paragraph 2 of article 7. It also considered that mention should be made of the problems of recognition that the sending or receiving of special missions might cause in the relations between States not recognizing each other and would have preferred a precise statement to the effect that such acts did not imply recognition. There was general agreement that those acts did not imply recognition unless the State concerned decided otherwise. His delegation had also noted, however, that it was difficult to find a formula which would set out the problem precisely and accurately reflect the opinions expressed by the various members of the Committee on that question. It had therefore decided not to insist that its amendment (A/C.6/L.664/Rev.1) be put to the vote.

7. The French delegation understood, from the statements made during the debate on the subject, that the Sixth Committee had not intended, by its decision on the United Kingdom-Nigerian amendment, to take a stand in regard to the possibility of special missions being sent or received between States not recognizing each other, or on its effects on the problem of recognition, but had merely manifested its intention not to deal with that question in the text of the Convention under discussion. The French delegation took note of that attitude, which of course did not affect its own basic position concerning the problems raised during the debate on paragraph 2 of article 7.

8. The CHAIRMAN put article 7, as amended, to the vote.

Article 7, as amended, was approved by 79 votes to none, with 3 abstentions.

9. Mr. OSTROVSKY (Union of Soviet Socialist Republics), explaining his vote, said that his delegation was not entirely satisfied with the form of article 7 just approved by the Committee. It had favoured the International Law Commission's text and since it regarded the maintenance of paragraph 2 as important for the progressive development of international law, it had made strenuous efforts, in a spirit of compromise and co-operation, to ensure its retention. Unfortunately, it had not been retained, and in order to ensure the rejection of the French amendment, which was totally unacceptable, it had been necessary to support the proposal for the deletion of paragraph 2; that had been possible because the Committee's decision would not substantially reduce the possibility of States' sending special missions to or receiving them from States they did not recognize, and because the wording of paragraph 1 was broad enough to cover all cases, including that of States which did not recognize each other.

10. Mr. BEN MESSOUDA (Tunisia) said that, as his delegation understood it, the Committee's vote did not mean that States did not have a right to receive missions from States they did not recognize.

11. Mr. KOSTOV (Bulgaria) said that during the discussions on article 7 his delegation had expressed its satisfaction with the International Law Commission's text. It had also insisted on the right of States which did not recognize each other to enter into contact through the sending or receiving of special missions, and it had supported the theory that recognition of a State was a separate act depending on a political decision, which depended in turn on the exclusive competence and sovereign right of the State concerned. As all the amendments submitted concealed the risk of impairing that right and running counter to established international practice, and thus eliminated the prospect of maintaining the original text, his delegation had been obliged to vote in favour of the deletion of paragraph 2. It had done so, however, in the clear knowledge that nothing should prevent States which did not recognize each other from exchanging special missions and attaching to that act any meaning they considered essential.

12. Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) said that his delegation had favoured the International Law Commission's text. In a spirit of co-operation, however, and in order to secure a text acceptable to the majority of delegations, it had voted in favour of the United Kingdom-Nigerian amendment.

Article 8 (Appointment of the members of the special mission)

13. Mrs. d'HAUSSY (France), referring to her delegation's amendment (A/C.6/L.665), said that her delegation felt it would be advisable for the sending State to supply the receiving State with precise information concerning the names and other relevant details of the persons appointed to the special mission.

14. Mr. MYSLIL (Czechoslovakia) said, with reference to his delegation's amendment (A/C.6/L.668), that the order of the last two phrases should be reversed. Since it would be better, from the drafting point of view, to include all obligations relating to prior information in one article, his delegation proposed that the last words of the International Law Commission's text be omitted and a reference made to article 11. There seemed little need to repeat in article 8 stipulations laid down in paragraph 1 (a) of article 11.

15. Stressing the right of the sending State to appoint the members of its special mission freely, he said that that basic right was limited by the receiving State in respect of its nationals or nationals of third States and in respect of persons unacceptable to it either prior or subsequent to their arrival. The reference in article 8 to articles 10 and 12 covered that limitation.

16. Mr. HAMBYE (Belgium) said that if the prior consent called for in article 2 related to the object of the mission and all details concerning its membership, article 8 seemed superfluous. Similarly, the notifications required under article 11 might seem to render the second part of article 8 superfluous. It did not seem, however, that those who had drafted the International Law Commission's text of article 8 had intended that the receiving State should give its prior consent to the size and composition of the special mission. The words "after having informed the receiving State ... appoint" could be interpreted as meaning that the mission could not function until the receiving State had given its consent. That and other misinterpretations would be obviated if the Belgian amendment (A/C.6/L.670) were accepted.

17. The French amendment (A/C.6/L.665) maintained the ambiguity of the Commission's text on the question whether the receiving State should give its prior consent to the size and composition of the mission. Also, the words "in a precise manner" could give rise to discussion concerning the degree of precision required.

18. As to the Czechoslovak amendment (A/C.6/L.668), his delegation would have preferred that the provisions contained in article 11 should be specified in article 8, not vice versa.

19. The Australian amendment (A/C.6/L.671/Rev.1) went too far because the prior consent it presupposed presumed that any modification to the composition of the mission might necessitate new negotiations. In addition, it seemed to be attempting to go further than article 19 of the 1961 Vienna Convention on Diplomatic Relations.

20. Sir Kenneth BAILEY (Australia), referring to his delegation's amendment (A/C.6/L.671/Rev.1), said that article 8 as drafted by the International Law Commission expressly made the appointment of the members of the special mission subject to the giving of prior information to the receiving State as to the proposed size and personnel of the mission, and to the powers of the receiving State under articles 10 and 12 to refuse consent to, or to reject, certain appointments by the sending State.

21. Paragraph 1 of his delegation's amendment corresponded in substance to article 8 as drafted by the Commission. His delegation had left out the adverb "freely", thinking it in a sense redundant; but that was a matter of drafting, not of principle, and his delegation could accept its inclusion.

22. Paragraphs 2 and 3 of his delegation's amendment added elements which the Commission had not thought it necessary to state expressly but which, as its commentary showed, it had thought were clearly contained by implication in its text. There was a difference of principle in that regard between the Belgian and Australian delegations. In the Australian delegation's view, the two points contained in paragraphs 2 and 3 of its amendment were clearly implied in the Commission's text and commentary. His delegation thought it desirable to spell out both of those matters expressly for three reasons. First, certain express powers of rejection by the receiving State were not left to be implied from article 8, but were given expressly in articles 10 and 12. That necessarily, in point of law, created real doubt as to what powers of rejection were to be found by implication in article 8. The Commission in its commentary had indicated that the necessary powers of rejection by the receiving State could not be found by implication in the general words of article 2. The presence of articles 10 and 12 was sufficient to create at least a doubt as to whether the

receiving State could confidently rely on article 8 alone either. His delegation therefore thought it desirable to remove the doubt by adding paragraphs 2 and 3 of its amendment. Secondly, the matters covered by paragraphs 2 and 3 were dealt with expressly in the comparable provisions of the Vienna Convention on Diplomatic Relations, particularly article 4 (2) relating to refusal of agrément in the only case where consent was required, namely, in regard to the head of the mission, and article 11 relating to the size of the mission. His delegation did not think that anything in the way of formal agrément was necessary in the case of the members of a special mission, but thought it would be wise to follow the pattern of the Vienna Convention. Thirdly, it would be far more courteous and less embarrassing to settle questions of consent as to the personnel and size of a special mission at the preliminary stages of notification and presumably confidential diplomatic or other intergovernmental discussion. While it was true, as the Commission said, that the receiving State could at some later stage make any objections effective by refusing an entry visa or by declaring a person appointed a member of the special mission persona non grata, surely those measures were embarrassing to both parties and should be avoided if at all possible. His delegation preferred a text which made it crystal clear that at the appointing stage the receiving State might exercise its authority in respect of the personnel and the size of any special mission it consented to receive.

23. His delegation agreed entirely with the suggestion that sub-paragraph (a), dealing with the composition of the special mission and any subsequent changes therein, should be deleted from paragraph 1 of article 11, which should be confined to the subsequent stages—the arrival and departure of the special mission—and that the duplication referred to by the Czechoslovak and Belgian representatives should be avoided. Those, however, were mainly drafting points.

24. The amendments of France (A/C.6/L.665) and Czechoslovakia (A/C.6/L.668) were both acceptable in principle, and should properly be referred to the Drafting Committee.

25. Mr. VIALL (South Africa) said that if, as had already been decided in article 2, the sending of a special mission was subject to the consent of the receiving State, then clearly that consent might be given subject to conditions, including conditions as to the size of the mission and the persons composing it. Those were clearly matters which might be settled by agreement between the sending and receiving States before the departure of the mission from the sending State. What was the position, however, if, as did happen in practice, there was no prior agreement on those matters? If the receiving State was left free to limit the size and the personnel of the mission after its arrival, serious difficulties might arise which could jeopardize the work of the mission and might even result in its recall. While under article 12 the receiving State might demand the recall or the termination of the functions of any member of the mission, it was at least doubtful whether in the absence of prior agreement the receiving State could under article 8 demand a reduction in the size of the mission once it had arrived.

26. Those difficulties could be resolved if the Convention were to make it quite clear that, in the absence of prior agreement, the receiving State had the right to limit the size of the mission and to refuse its consent to the appointment to the mission of any particular person unacceptable to it. While the right to raise those objections might perhaps be implied from article 8 as at present drafted, it seemed unwise to leave to implication something which could easily be regulated expressly in the Convention.

27. The Australian amendment (A/C.6/L.671/Rev.1) appeared to answer a need, especially as it made it clear that the rights of the receiving State were to be exercised, if at all, before the departure of the special mission. While his delegation had no objection to the French and Belgian amendments (A/C.6/L.665 and A/C.6/L.670), it considered them perhaps less explicit than the Australian amendment, and therefore preferred the latter. His delegation was unable to support the Czechoslovak amendment (A/C.6/L.668), however, because it might not cover the situation to which he had referred, or at any rate might give rise to dispute.

28. Mr. ROBERTSON (Canada) said that article 8, as it stood, did not deal adequately with the need for the receiving State to grant prior consent to the size and membership of a special mission. It required only that the sending State convey such information to the potential receiving State, and did not come to grips with the critical question of what the receiving State could do if it should object either to the persons nominated or to the size of the mission. Under the existing wording of article 8, the agreement of the receiving State would appear to be presumed unless there was either an explicit refusal of the mission as a whole, a refusal to grant a visa to one or more of the members of the mission, or a declaration that any of them was persona non grata.

29. In his delegation's view, the Convention should include provisions which would enable a State granting its consent to the sending of a mission to retain the right to determine the reasonableness of the size and composition of such a mission without having to take those somewhat drastic steps, which were regarded as quite serious in accepted State practice. The Australian amendment (A/C.6/L.671/Rev.1) went a long way towards remedying that difficulty by making provision for the receiving State either to refuse consent to the appointment of any particular person to the mission or to refuse consent to missions of unreasonable size in a simple and reasonable manner, and his delegation would therefore support that amendment. If it did not meet with the approval of the Committee, his delegation would see some merit in both the French and Belgian amendments (A/C.6/L.665 and A/C.6/L.670), since they made the International Law Commission's text of article 8 more precise.

30. Mr. OGUNDERE (Nigeria) said that the prior consent of the receiving State should be secured to the size and composition of the special mission. The French proposal (A/C.6/L.665) for the insertion of the words "in a precise manner", although only a drafting matter, was undesirable and unnecessary, since those words were subjective in content. On the other hand, his delegation supported the French proposal (ibid.) for the insertion of the words "of the

names and capacities" since that idea, although taken care of to some extent in the International Law Commission's text, was a cardinal point. His delegation felt that paragraphs 1 and 2 of the Australian amendment (A/C.6/L.671/Rev.1) had already been taken care of in articles 8, 11 and 12 of the Commission's draft, but it was much attracted by paragraph 3 of that amendment, which would improve the Commission's text of article 8. His delegation was in sympathy with the spirit of the Czechoslovak amendment (A/C.6/L.668), but preferred paragraph 3 of the Australian amendment.

31. Mr. ENGO (Cameroon) pointed out that the English version of the French amendment (A/C.6/L.665) did not appear to be an accurate translation.

32. Mr. CHAMMAS (Lebanon) was gratified to note that the International Law Commission, in its commentary on article 8, had stated that consent to receive a special mission and acceptance of the persons forming it were two distinct matters, and had called for the provision of prior information to the receiving State concerning the identity and the number of the members of the special mission. While there was some difference in wording, and perhaps some slight difference in substance, between the various proposals, the question raised by article 8 was not controversial. His delegation was opposed to the use of the word "freely", since it might be construed to mean that the sending State had only to inform the receiving State of the names of the members of the mission. The receiving State must of course protect itself against abuses that other States might indulge in. The necessary safeguards could be established by giving the receiving State some authority beyond that of refusing a visa or declaring a member of a special mission persona non grata.

33. His delegation had no difficulty in supporting the French amendment (A/C.6/L.665), since it might facilitate agreement on the sending of special missions if the receiving State was informed in a precise manner, before the mission was sent, of the names and functions of the persons whom the sending State intended to appoint. His delegation considered paragraph 2 of the Australian amendment (A/C.6/L.671/Rev.1) too rigid, but favoured the rest of that amendment, and would like to see it combined with the French amendment in one paragraph.

34. Mr. OWADA (Japan) said that his Government in its remarks (see A/7156) had expressed the view that it was necessary to safeguard the position of receiving States in respect of the sending of special missions, with particular reference to the question of the composition and the size of such missions. His delegation noted that the International Law Commission had inserted in article 8 the obligation to provide prior information, so as to give the receiving State an opportunity of raising objections concerning the identity and the number of the members of the special mission. It feared, however, that that principle had not been given proper expression in the text of article 8 drafted by the Commission. It had difficulties with the words "freely" and "informed", which gave rise to the question whether the obligation under article 8 was simply to inform and to do nothing more. From that standpoint, the Australian amendment (A/C.6/L.671/Rev.1) improved the wording of article 8. The French amendment (A/C.6/L.665) was also useful since it made the meaning of the article clearer, and the French and Australian amendments were not mutually exclusive. On the other hand, the Belgian and Czechoslovak amendments (A/C.6/L.670 and A/C.6/L.668), like the Commission's draft, did not make it quite clear that the receiving State had the right to object to the size and composition of a special mission. While it was not necessary to require prior consent along the lines of an agrément, the right of the receiving State to object when the occasion arose should be safeguarded.

35. Mr. OSTROVSKY (Union of Soviet Socialist Republics) said that original text of article 8 was entirely satisfactory. The fundamental ideas conveyed in it were clearly set forth; it aimed to protect the interests and rights of sending States, without losing sight of the interests and rights of receiving States. Stylistically, however, there was room for improvement.

36. With regard to the French amendment (A/C.6/L.665), his delegation doubted the value of inserting the words "in a precise manner". The use of the term "informed" surely implied that the information given should be accurate. To insert an express stipulation to that effect would be contrary to normal practice in the drafting of international documents. When such documents were drawn up and accepted by States, the good intentions of all concerned were taken for granted and should not be questioned. Any qualification of the term "informed" was unnecessary and would reflect an unjustifiably suspicious approach. The French proposal for the insertion of the words "of the names and capacities" between the words "of its size and", and the words "of the persons" was also unnecessary, because information regarding the persons to be appointed would, as a matter of course, include notification of their names and capacities. Moreover, whereas the French text would narrow the scope of the article by confining the information given regarding the persons to their names and capacities, the International Law Commission's text did not preclude the provision of further information as appropriate. The Commission's text was more flexible and more in accordance with practical needs. His delegation could therefore not accept the French amendment.

37. The Belgian amendment (A/C.6/L.670) did not seem, from a first reading, to involve any substantial departure from the Commission's text. However, further study would be required to determine whether it involved only a drafting change improving the original text, or a change in the substance of the article.

38. Although no objections could be raised to any of the ideas embodied in the Australian amendment (A/C.6/L.671/Rev.1), his delegation had misgivings concerning their presentation. The text was unnecessarily lengthy and detailed, and, although it raised no questions of principle, difficulties might arise in the application of such an over-complicated text. Paragraph 1 could be briefer. The point covered in paragraph 2 was dealt with more fully in article 12 of the Commission's text, while the question of consent dealt with in paragraph 3 was already covered by

article 2. While there could be no objection to the basic idea that the sending State had the right to appoint the members of a special mission provided it observed certain conditions, it would be preferable, from a drafting point of view, to set forth those conditions in other articles and to refer to those articles in article 8.

39. The Czechoslovak amendment (A/C.6/L.668) felicitously stated the basic idea in the briefest possible form and was stylistically preferable to the other texts. To include all the limitations on the right of the sending State in article 8 would detract from the formal neatness of the text. Even the stipulation, in the Commission's text, that the information should be given prior to the appointment of the members of a special mission was a repetition of conditions stated elsewhere, although its retention would be acceptable.

40. The CHAIRMAN suggested that the amendments to article 8 should be put to the vote.

41. Mr. MYSLIL (Czechoslovakia) said that, before the vote, he would like to reply to some points raised in the discussion concerning the Czechoslovak amendment (A/C.6/L.668) and also to comment on the other amendments, which had not yet been introduced when he had made his earlier statement.

42. Since all States would probably both receive and send special missions at some point, an attempt should be made in drafting article 8 to balance the rights and obligations of sending States and receiving States. The drafting of article 8 involved the codification of the rules established by international practice rather than the development of new rules. It was international practice for a State sending a special mission to appoint the members of that mission freely. The act of appointment was an internal matter, which could hardly be influenced by the receiving State. His delegation therefore saw no reason to omit the word "freely". Once informed of the proposed membership of the special mission, the receiving State could exercise its right of refusal. It would be difficult to spell out all the limitations on the right of the sending State in article 8. The International Law Commission had been somewhat inconsistent in taking only one element from article 11 and inserting it in article 8, when it might have incorporated elements from articles 10 and 12 also. However, the latter course would have involved repetition of the same principles in two different places, because articles 10, 11 and 12 would still have had to be retained, since they dealt with other questions besides appointment. The main purpose of his delegation's amendment had been to avoid unnecessary repetition.

43. Mr. SINCLAIR (United Kingdom) proposed that the vote on the amendments to article 8 should be deferred until the Committee's next meeting in order to allow the sponsors time to prepare, if possible, a composite text which would facilitate the voting.

44. Mr. REIS (United States of America) proposed that, since the Committee had already had a lengthy discussion on article 8 and the amendments to it and there seemed to be no basic differences of principle, all the texts before the Committee should be referred direct to the Drafting Committee.

45. Mr. DADZIE (Ghana) proposed that, in view of the different approches reflected in the various amendments, the Committee should, before referring them to the Drafting Committee, vote on the principle whether all the rights of the sending State should be set forth in one article and those of the receiving State stated elsewhere or whether they should all be included in the same article.

46. Mr. YAÑEZ-BARNUEVO (Spain) supported the United Kingdom's proposal that a vote on article 8 be deferred. It would be difficult for his delegation to vote on the amendments at the present stage, and it would be unwise to send all the amendments to the Drafting Committee, as suggested by the United States representative, because questions of substance as well as of drafting were involved. The parallels drawn between article 8 and article 11, paragraph 1 (a), were inaccurate, because paragraph (3) of the International Law Commission's commentary on article 11 clearly stated that the notification referred to in article 11 should not be confused with the prior notice provided for in article 8.

47. His delegation found the Commission's text generally acceptable and might also be able to accept some of the amendments, e.g. the French amendment (A/C.6/L.665). The Belgian amendment (A/C.6/L.670) entailed a change of substance and not merely a drafting change, since it stipulated that the information should be given after the appointment of the members of the special mission but before the mission's departure. It would therefore be wise to defer the vote so that the sponsors could try to reach agreement. In any case, the amendments as they stood involved more than drafting changes and could not be sent direct to the Drafting Committee.

48. The CHAIRMAN considered that, if the amendments were sent direct to the Drafting Committee, the result would be a repetition of the present discussion, since the amendments involved questions of substance. A vote could not be taken at the present time, because more delegations had now expressed a wish to speak on the subject. He hoped the sponsors of amendments would be able to submit a joint text in time for the next meeting.

49. He reminded the Committee that its work on the draft articles was well behind the time-table proposed in the note by the Secretariat on the organization of work (A/C.6/L.645). In order to expedite consideration of the present item, the Committee might accept the rule that speakers should not exceed five minutes. It would also be helpful if amendments could be circulated well in advance of meetings and if sponsors would consult together before their amendments came before the Committee. It was difficult to make progress if at every stage delegations refused to adopt a definite position because they had not had sufficient time to consider questions or to receive instructions from their Governments.

50. Mr. OSTROVSKY (Union of Soviet Socialist Republics) shared the Chairman's concern but felt that delegations must exercise their prerogative to discuss the proposals so as to understand them fully before they were put to the vote. Otherwise, the final text of the draft Convention might bear the stamp of undue

haste. He suggested that members should refrain from submitting minor amendments.

51. Mr. REIS (United States of America) said that while his delegation would not wish the Committee to act hastily, it had noted that the work was proceeding at a snail's pace, and that was why it had submitted its proposal concerning the amendments to article 8. The Committee had other items on its agenda, and the remainder of the session could not be devoted exclusively to the one item now under consideration.

The meeting rose at 1.20 p.m.

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