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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.665, A/C.6/L.668, A/C.6/
L.670, A/C.6/L.671/Rev.1, A/C.6/L.678, A/C.6/
L.666)

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

1. Sir Kenneth BAILEY (Australia) said that, following the suggestion made by the Chairman at the 1049th meeting, the sponsors of amendments to article 8 had conferred together and had succeeded in reducing their four amendments to two. He was now able to introduce, on behalf of Australia, Belgium and France, a joint amendment (A/C.6/L.678) to replace their respective amendments A/C.6/L.671/Rev.1, A/C.6/L.670 and A/C.6/L.665. The three delegations had been unable to reach agreement with the Czechoslovak delegation, because the Czechoslovak amendment (A/C.6/L.668) was based on the principle of relegating all provisions relating to the receiving State to articles 10, 11 and 12, whereas the sponsors of the joint amendment considered it both wise and necessary, as had the International Law Commission, to include some of those provisions in article 8. Their consultations had shown, however, how closely the provisions of article 8 were interwoven with those of articles 10, 11 and 12, and the sponsors thought that it would be wise to discuss and vote on the four articles together.

2. The new text incorporated the main elements of the French and Australian amendments (A/C.6/L.665 and A/C.6/L.671/Rev.1) and the essence of the Belgian amendment (A/C.6/L.670). In his delegation's view, the true merit of the new amendment was that it made it quite clear that the receiving State had the right to refuse to accept any person as a member of a special mission before the appointment was made. It was important that such matters should be settled through friendly negotiations before the formal appointment of the members of the special mission, so that the receiving State would not be obliged to

take the embarrassing step of declaring such persons non grata at a later stage. He had not intended, when introducing the Australian amendment (A/C.6/L.671/Rev.1) at the 1049th meeting, to imply that the formal agrément of the receiving State would be required for each member of the special mission. The intention of that amendment had been to give the receiving State an opportunity to make any objection at an early informal stage. That that had been the Commission's intention also was clear from paragraph (2) of its commentary on article 8. It was, however, desirable that the principle should be stated not only in the record of the Sixth Committee's debate and in the commentary to the article, but in the text of the article itself.

3. Mrs. D'HAUSSY (France) said that the last two sentences of the joint amendment (A/C.6/L.678) reproduced the ideas which had been embodied in the Australian amendment (A/C.6/L.671/Rev.1). With regard to the first sentence, her delegation had taken account of the objections raised in the discussion to the proposal that the words "in a precise manner" be inserted after the words "the receiving State", and had decided that the phrase could be omitted. The wording of the first sentence of the new text was broader than that proposed in the French amendment (A/C.6/L.665) and made it quite clear that the receiving State could request any information it saw fit regarding the persons to be appointed to the special mission, as well as their names and designations.

4. Her delegation had been unable to reach agreement with the Czechoslovak delegation, since it agreed with the International Law Commission that articles 8 and 11 dealt with different stages in the sending of a special mission. The receiving State should be informed of the proposed membership of the special mission in advance, so that it could make comments without having to resort to the procedures laid down in article 12, whose application was likely to create tension.

5. Mr. HAMBYE (Belgium) said that his delegation had co-sponsored the joint amendment in a conciliatory attempt to draft a text which would be acceptable to all delegations. He was still not convinced that it was necessary to codify rules which could have remained a matter of practice. Nevertheless, his delegation had supported the new amendment because it fulfilled the major requirement and stipulated clearly that the sending State should transmit the required information to the receiving State in good time.

6. The CHAIRMAN suggested that the Committee should accept the Australian proposal that articles 8,

10, 11 and 12 should be considered together, since they were so closely interconnected. He also suggested that the Committee should defer further discussion of article 8 until the amendments to all four articles had been circulated in all the official languages used in the Committee, and should now proceed to article 9, which bore little relation to articles 8, 10, 11 and 12.

It was so decided.

Article 9 (Composition of the special mission)

7. Mrs. D'HAUSSY (France), introducing her delegation's amendment to article 9 (A/C.6/L.666), said that the main effect of the amendment was to delete the reference in the International Law Commission's text to two categories of staff which the Commission regarded as being different. It was unnecessary to refer to "diplomatic staff" as well as to "representatives of the sending State" because, according to the Commission's text, the privileges and immunities enjoyed by both would be identical. The distinction was also inaccurate. In her delegation's view, the members of a special mission could be divided into three categories: firstly, persons who, in one capacity or another, were entrusted with the actual carrying out of the task entrusted to the special mission; secondly, administrative and technical staff as required; thirdly, service staff as required.

8. The first category comprised the head of the mission, who would be the representative of the sending State, and his alternates and advisers if necessary. The terminology used in the French amendment was much more in keeping with the practical nature of special missions than the terminology of the Commission's text. The fact that a member of a special mission was a diplomat would not affect his status as a member of the special mission. That would happen only in the case of a member of a permanent diplomatic mission accredited to the receiving State who was appointed a member of a special mission. That case was covered by paragraph 2 of the article, and the reference to diplomatic staff in paragraph 1 could only lead to confusion. The French amendment, if adopted, would entail drafting changes in articles 1, 10, 11 (1(e)), 12, 14, 29, 31, 32, 33, 34, 35 (2), 40, 41, 43 and 49.

9. Mr. BARTOS (Expert Consultant) said that special missions often had no head. In the Scandinavian countries, for example, special missions frequently consisted of representatives of different parliamentary groups, and all members were regarded as having equal responsibility. The International Bank for Reconstruction and Development often required that all members of missions sent to the Bank should have equal status and signatory powers. When special missions were appointed to deal with border questions, the members were given equal status and equal responsibilities. The International Law Commission's text of article 9, paragraph 1, reflected international practice in the matter. In drafting it, the Commission had been guided not by the 1961 Vienna Convention on Diplomatic Relations but by the 1946 Convention on the Privileges and Immunities of the United Nations. It had given the matter thorough consideration and had concluded that no valid comparison could be drawn

between diplomatic staff and members of special missions.

10. Members of special missions were not always of diplomatic rank. Special missions were often composed of statesmen or politicians or representatives of political parties, social movements or governmental bodies. In such cases, all the members bore equal responsibility and were sometimes accorded full powers collectively. Such missions were often used for peace-making discussions or in times of crises. The Committee should not take an over-simplified approach to the matter.

11. Mr. OGUNDERE (Nigeria) said that his delegation attached importance to the flexibility of the International Law Commission's text. The French amendment tended to replace that flexibility by an element of rigidity, if not regimentation. Firstly, in seeking to restrict the freedom of the sending State concerning the composition of the special mission and the titles of its members the French amendment ran counter to the reasoning behind paragraph 1 of the article as explained by the Commission in paragraph (3) of its commentary. Secondly, by deleting the words "diplomatic staff" the French delegation disregarded the position of many small nations which were sometimes obliged to use members of permanent diplomatic missions on their special missions. If the Committee was to produce a convention which would not only embody all the requisite legal norms on special missions but be sufficiently flexible to be of benefit to large and small nations, the French amendment would have to be rejected.

12. Mr. OSTROVSKY (Union of Soviet Socialist Republics) said that his delegation had been alarmed by the statement made by the French representative in introducing her delegation's amendment, for the intention seemed to be to change several of the International Law Commission's draft articles. The draft Convention was the result of several years of meticulous work by eminent lawyers and derived from the work started at the 1961 United Nations Conference on Diplomatic Intercourse and Immunities. If the Committee disregarded that work, it might reach a conclusion different from that desired. Analysis of the International Law Commission's text of article 9 and its commentary thereon showed that the terminology used in the article was based on that endorsed at Vienna in 1961. Any attempt to change that terminology could lead to complications and might prejudice the attempt to achieve uniformity in convention terminology.

13. The statement in paragraph (2) of the Commission's commentary that a special mission must include at least one representative of the sending State was based on current practice and was properly reflected in paragraph 1 of article 9. There seemed no need to disrupt existing practice by obliging States to limit special missions to one representative. Similarly, there seemed little reason to delete the words "diplomatic staff"; paragraph (5) of the commentary showed that the inclusion of those words in the Commission's text was not fortuitous.

14. For those reasons he would support the Commission's text and vote against the French amendment.

15. Mr. SPERDUTI (Italy) said that the Expert Consultant had made some cogent comments. In principle, the Italian delegation favoured the text submitted by the International Law Commission. It could, however, accept a reference to alternates and advisers as proposed in the French amendment.

16. Mrs. KELLY de GUIBOURG (Argentina) said that the submission of the French amendment should lead the Committee to decide whether or not the structure of the draft Convention as prepared by the International Law Commission was to be maintained. There was a difference of substance between the French representative's ideas and those of the Commission on such matters as the composition of, and privileges and immunities to be granted to, a special mission. The Sixth Committee's task would be difficult, if not impossible, unless it laid down the general lines of the Convention by deciding whether or not to retain the principle that special missions could consist of one or more representatives of the sending State, diplomatic staff and administrative, technical and service staff. A decision on that matter was important because on it would depend the maintenance of other provisions of the Convention, particularly those relating to the privileges and immunities to be granted to members of special missions. Adoption of the French amendment, which altered the structure on which the Convention was based, would necessitate a general debate on the draft Convention as a whole.

17. Her delegation could not accept the French amendment.

18. Mr. ALVAREZ TABIO (Cuba) said that the International Law Commission's text was based on the provisions of the 1961 Vienna Convention on Diplomatic Relations and respected the principle that the composition of a special mission and the titles of its members were matters within the exclusive competence of the sending State. His delegation agreed with the International Law Commission's conclusion that the functions of special missions and permanent diplomatic missions were not incompatible and could be performed simultaneously by a member of the permanent diplomatic mission, who would not lose the privileges and immunities he enjoyed as such.

19. His delegation was therefore unable to accept the French amendment, which would modify substantially the provisions of the Convention which related to privileges and immunities. Moreover, the tendency to reduce to a minimum the sending State's rights in the matter could not be accepted.

20. Mr. VEROSTA (Austria) suggested that the word "special" should be inserted before the word "mission" in the French amendment. It would be helpful if the Expert Consultant could explain why the International Law Commission had included the words "diplomatic staff" in its draft. Lastly, it would make for clarity if the words "of the sending State" were inserted after the words "special mission" in paragraph 2 of article 9.

21. Mr. KESTLER FARNES (Guatemala) said that his delegation could not support the French amendment, for two reasons. Firstly, a mission of one representative would be contrary to the very nature

of special missions, which dealt with complex subjects and could in consequence be composed of several persons from various walks of life. Secondly, the sending State should be allowed a certain amount of freedom regarding the composition and size of its special mission.

22. Mr. DADZIE (Ghana) said that his delegation could accept paragraph 1 of article 9 as drafted by the International Law Commission. The French amendment equated a special mission with a normal diplomatic mission, which had to have a head and supporting staff. It should be left to the sending State to decide whether its special mission was to consist of one or more representatives. The Ghanaian delegation would therefore be unable to support the French amendment.

23. The need for paragraph 2 of article 9 was not apparent. The members of the permanent diplomatic mission in the receiving State already enjoyed privileges and immunities which might be greater than those to which a special mission would be entitled. Perhaps the purpose of the paragraph was to ensure that all receiving States viewed the situation in the same way. His delegation would not object to the deletion of that paragraph, but on the whole it supported the International Law Commission's text.

24. Mr. OWADA (Japan) said that two questions arose concerning paragraph 1 of article 9 and the French amendment thereto: firstly, whether a special mission should consist of only one representative—that was a question of substance on which the Committee had to take a position; secondly, whether the words "diplomatic staff" should be maintained.

25. In so far as the second point relating to the use of the words "diplomatic staff" was concerned, the French amendment should be read in conjunction with its proposal concerning article 1 (g) (A/C.6/L.658). The question at issue would not be a question of substance; it was not whether a member of a permanent diplomatic mission could be attached to a special mission; it concerned, rather, the terminology to be employed for describing the various categories of members of special missions. Presumably, the French reluctance to use the words "diplomatic staff" was attributable to the fact that those words might give the impression that the equivalent members of special missions enjoyed exactly the same privileges and immunities as those of permanent diplomatic missions. That was a question closely linked with that of privileges and immunities. It might be preferable to defer a decision on the second part of the French proposal until the Committee had defined the terms of the Convention or until questions of substance relating to privileges and immunities were discussed.

26. Mr. SONAVANE (India) said that his delegation could accept the flexible wording of the International Law Commission's text. He agreed with the Austrian representative that the words "of the sending State" should appear in paragraph 2; they could perhaps be inserted after the words "permanent diplomatic mission".

27. Mr. CHAMMAS (Lebanon) agreed with the Japanese representative that certain parts of the

French amendment could not be discussed until the Committee discussed article 1.

28. In preparing its text, the International Law Commission had abided by the principle that the Convention should be endowed with a certain degree of flexibility. It might be better if the word "consists" in paragraph 1 of article 9 were replaced by the words "may consist". His delegation hoped that the International Law Commission's text of paragraph 2 would be retained.

29. Mr. RATTANSEY (United Republic of Tanzania) said that after hearing the Japanese representative he felt there was some substance in the French proposal for the deletion of the words "diplomatic staff". The fact that members of the sending State's permanent diplomatic mission accredited to the receiving State could be included in the special mission was stated in paragraph 2. The use of the words "diplomatic staff" in paragraph 1 seemed, therefore, to introduce the idea that a sending State could include in its special mission not only persons from its permanent diplomatic mission in the receiving State but also members of its diplomatic staff stationed in its own territory. In view of the question of privileges and immunities, some thought should be given to the deletion of those words. Apart from that, the International Law Commission's text was flexible and took account of existing practice.

30. Mr. LIANG (China) said that, in so far as the French amendment was concerned, attention should be paid to the statement made by the Expert Consultant.

31. It was desirable that members of the permanent diplomatic mission accredited to the receiving State should participate in the work of a special mission. The last twelve words of paragraph 2, however, gave rise to certain doubts. The status and accreditation of a member of the permanent diplomatic mission would not be affected if he were to perform his diplomatic duties and those assigned to him as a member of the special mission concurrently, and he would, in that case, continue to enjoy the privileges and immunities to which he was entitled as a member of the permanent diplomatic mission. If, however, he were detached from the embassy in order to work exclusively with the special mission, his status and accreditation would change and he would no longer be entitled to the privileges and immunities of the permanent diplomatic mission, which would, presumably, be greater than those granted to the special mission. It might be better, therefore, if the words to which he had referred were deleted.

32. Mr. ENGO (Cameroon) said that his delegation considered that the International Law Commission's text, which gave the sending State full discretion to dictate the titles of the members of the special mission, was fully adequate and it could not support the French amendment, which attempted to restrict the sending State's choice. In practice special missions sent to negotiate loan agreements, for example, were often composed of persons of equal rank, each of whom dealt with a different aspect of the task. His country had not found it necessary to appoint heads for its special missions.

33. In his delegation's view, the expression "diplomatic staff" in paragraph 1 applied to those persons who were exercising diplomatic functions when appointed to the special mission. Paragraph (5) of the commentary on article 9 seemed to suggest that the expression referred only to those members of the sending State's foreign service who were resident in the receiving State. The real problem was whether the dual functions of resident diplomatic representatives who were appointed members of a special mission were incompatible. His delegation agreed with the Commission that those functions were not incompatible and that such representatives could perform their functions as members of a special mission without losing their diplomatic status.

34. The Commission had done a great deal of work on the draft Convention and all States had participated directly or indirectly in that work. Accordingly, he urged members to propose only such amendments as would substantially improve the Commission's text.

35. Mr. DADZIE (Ghana) said that the Tanzanian representative had apparently confused the expression "diplomatic staff" in paragraph 1 with the expression "members of a permanent diplomatic mission" in paragraph 2. The first expression referred to members of the diplomatic corps of the sending State, regardless of where they were serving; the second referred to members of the diplomatic staff who were also members of the permanent diplomatic mission accredited to the receiving State. That distinction was important, since not every member of a sending State's diplomatic staff in the receiving State enjoyed the same privileges and immunities as the members of its permanent diplomatic mission accredited to the receiving State. The use of the two expressions in the two paragraphs of article 9 should not, therefore, give rise to any confusion. His delegation found the International Law Commission's text acceptable.

36. Mr. MYSLIL (Czechoslovakia) said that the French amendment would change the whole structure of the proposed Convention. In particular, it would be necessary to determine the privileges and immunities enjoyed by alternates and advisers. That terminology would be more appropriate in the convention to be prepared on representatives to international organizations.

37. The Drafting Committee might consider whether, in view of the definition in article 1 (g), paragraph 1 of article 9 should not simply refer to the "members of the staff of the special mission". He shared to some extent the views of the Ghanaian representative concerning the need to retain paragraph 2, which established important rights.

38. There should be no doubt that a member of a sending State's permanent diplomatic mission accredited to the receiving State could serve temporarily on a special mission without losing his privileges and immunities as a member of the permanent diplomatic mission, even if for that interval he ceased to exercise his functions at the permanent mission. The situation was the same as that dealt with in article 5 (3) of the 1961 Vienna Convention on Diplomatic Relations, which stated that a head of mission or any member of the diplomatic staff of the mis-

sion might act as a representative of the sending State to any international organization.

39. Mr. MOLINA LANDAETA (Venezuela) said that his delegation supported article 9 as drafted by the International Law Commission. It could not support any substantive amendments which might disturb the general scheme of the draft Convention envisaged by the Commission. Nor would his delegation favour separate discussion of the various parts of the French amendment, since that would complicate the Sixth Committee's work. On the other hand, his delegation was prepared to consider any amendment which did not change the spirit of the text.

40. Mr. HAMBYE (Belgium) said that his delegation was unable to support the International Law Commission's draft of article 9. The representative character of the special mission belonged to the mission as a whole, and not to particular representatives designated as members of the mission. It was not feasible to have several members with the same rank. Furthermore, the references to both diplomatic staff and members of the permanent diplomatic mission might give rise to some confusion. For those reasons, his delegation supported the French amendment.

41. It was difficult to conceive of a special mission without a head and it was unusual to leave it to the sending State to decide whether or not to appoint a head. The Commission must have taken the same view, since in article 14 it provided for the case where the sending State had not appointed a head of special mission by declaring that one of the representatives of the special mission designated by the sending State would be authorized to act on behalf of the special mission.

42. Paragraph 2 of article 9 covered two questions. The first question—whether a member of a permanent diplomatic mission could be appointed a member of a special mission—had been answered in the affirmative. That answer was correct, in his delegation's view, and was properly placed in article 9. The second question—whether the member of the permanent diplomatic mission assigned to a special mission retained the privileges and immunities he enjoyed as a member of the permanent diplomatic mission—had also been answered in the affirmative. The Drafting Committee should consider, however, whether it would not be better to place that answer in article 21 on the status of the Head of State and persons of high rank.

43. Mr. REIS (United States of America) proposed that the Committee should approve in principle article 9 as drafted by the International Law Commission and should send it to the Drafting Committee, together with the French amendment, and that the Drafting Committee should be requested to consider the questions of terminology and definitional clarity raised by that amendment.

44. Mr. RATTANSEY (United Republic of Tanzania), replying to the Ghanaian representative, said that he had not confused the expressions "diplomatic staff" and "members of a permanent diplomatic mission". Nor had the International Law Commission confused those expressions: in paragraph (5) of its commentary

it referred only to members of the permanent diplomatic mission accredited to the receiving State, and not to diplomatic staff sent with the special mission, because the point at issue was the granting of privileges and immunities to members of a special mission, and the Commission certainly would not think it correct that all the diplomatic staff on the special mission should enjoy diplomatic privileges and immunities. He suggested that diplomatic staff might be covered by the expression "administrative staff".

45. Mr. YASSEEN (Iraq) said that the French amendment endeavoured to establish order in a matter where there was no order. Article 9 as drafted by the International Law Commission reflected the existing practice and he saw no need to change that practice.

46. He could not accept the argument that article 9 conflicted with article 1, since article 1 was to be drawn up in the light of the decisions taken by the Committee on the other articles. Accordingly, he hoped that the French delegation would not press its amendment.

47. Mr. BARTOS (Expert Consultant) said that various States, in their comments, had taken different views on whether members of a permanent diplomatic mission appointed to a special mission should retain their privileges and immunities as members of the diplomatic mission. After studying the present-day practice, the International Law Commission had decided to deal with that question in paragraph 2. As there were substantial differences of opinion among States on that issue, the Sixth Committee must decide that point.

48. In his own view, since the head or a member of the permanent diplomatic mission accredited to the receiving State was often the head or a member of special missions, the performance of functions on a special mission should not affect his enjoyment of privileges and immunities in his other capacity. In practice, special missions always included some member of the permanent diplomatic mission in the receiving State to assist the special mission and to maintain a liaison between the special mission and the diplomatic mission. It could not be presumed that such a person had abandoned his functions as a member of the diplomatic mission by performing functions on a special mission.

49. Mrs. d'HAUSSY (France) said that she supported the United States proposal and consequently would not press for a vote on her delegation's amendment.

50. Mr. OSTROVSKY (Union of Soviet Socialist Republics) said that his delegation could not support the United States proposal. The task of the Drafting Committee was to assist the Sixth Committee, not to do its work. Decisions should be taken by the Sixth Committee itself.

51. Mr. CHAMMAS (Lebanon) said that, while in principle the USSR representative was correct, the work of the Drafting Committee had to be submitted to the Sixth Committee for final approval. Accordingly, he supported the United States proposal.

52. In his view, a member of a permanent diplomatic mission continued to enjoy the privileges and

immunities which that status conferred on him, regardless of what functions were assigned to him.

53. Mr. ENGO (Cameroon), supported by Mr. MUTUALE (Democratic Republic of the Congo), said

that the substantive questions raised by the French amendment should not be left to the Drafting Committee for decision.

The meeting rose at 1.35 p.m.