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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.655, A/C.6/L.679)

Article 13 (Commencement of the functions of a special mission)

1. The CHAIRMAN expressed the hope that for the articles for which no amendment had been submitted, the Committee would continue to follow the procedure previously adopted—in other words, that it would approve them without debate and refer them to the Drafting Committee.

2. Mr. HAMBYE (Belgium) said that, although he understood the Chairman's desire to speed up the Committee's work, he believed that the Committee should avoid excessive haste in its consideration of the articles of the draft Convention. Although his delegation had been unable to submit formal amendments to articles 13, 14 and 15, it wished to make two comments on article 13 of the International Law Commission's draft, for the attention of the Drafting Committee.

3. The first concerned the words "as soon as the mission enters into official contact". It was hard to see how such a vague phrase could be applied; it was likely to give rise to difficulties of interpretation in practice. The Commission itself had noted in paragraph (6) of its commentary that the commencement of the functions of a special mission did not necessarily coincide with the entry into force of the régime of privileges and immunities of its members. Consequently, a more precise wording should be found.

4. His second comment had to do with paragraph 2, which provided that the commencement of the functions of a special mission did not depend upon representation of the mission by the permanent diplomatic mission of the sending State or upon the submission of letters of credence or full powers. It was usual for so-called ceremonial missions to carry letters of credence. Since that was a widespread practice, it should be sanctioned by an explicit reference in paragraph 2.

5. He wished to make it clear that he was merely making suggestions of principle which his delegation wished to bring to the attention of the Drafting Committee.

Article 13 was approved and referred to the Drafting Committee, together with the observations of the Belgian delegation.

Article 14 (Authority to act on behalf of the special mission)

6. The CHAIRMAN said that the Committee had before it a United Kingdom amendment to article 14 (A/C.6/L.655), which seemed to him to be a purely formal proposal.

7. Mr. DARWIN (United Kingdom) said that, while he agreed that that was largely a matter of drafting, he would like to give an example to illustrate the usefulness of his delegation's amendment, which emphasized that the head of the special mission "is normally the only person authorized" to act, but that another member of the mission was also competent to do so.

8. The changes proposed by the United Kingdom had been approved by the International Law Commission in 1965 but had not been retained in the present wording of article 14, which, unfortunately, was therefore somewhat inflexible in that it did not cover all the conceivable cases. It could be assumed, for example, that a special mission, having been summoned to a meeting with the Minister for Foreign Affairs of the receiving State, might wish that meeting to be postponed pending the receipt of instructions from its Government. In such cases the usual practice would be for an assistant to the head of the special mission to make a request for postponement to the Minister for Foreign Affairs by telephone. As article 14 was now worded, the head of the mission apparently had to make the request himself. Similarly, a message from the Ministry could normally be validly received by an assistant to the head of the mission.

Article 14 was approved and referred to the Drafting Committee, together with the United Kingdom amendment (A/C.6/L.655).

Article 15 (Organ of the receiving State with which official business is conducted)

9. Mr. BEN MESSOUDA (Tunisia) said that he would like to see the expression "Ministry of Foreign Affairs" replaced by "Department of Foreign Affairs" in article 14 and in all other articles in which it occurred, since in many countries, including his own, that ministerial department was organized in the form not of a Ministry but of a State secretariat.

10. The CHAIRMAN said that the Drafting Committee would not fail to take account of the Tunisian representative's suggestion.

Article 15 was approved and referred to the Drafting Committee, together with the suggestion of the Tunisian delegation.

Article 16 (Rules concerning precedence)

Article 16 was approved without debate and referred to the Drafting Committee.

Article 17 (Seat of the special mission)

11. The CHAIRMAN, noting that the Belgian delegation had submitted an amendment (A/C.6/L.679) which would replace the word "may" in article 17, paragraph 3, by "shall", proposed that consideration of article 17 should be deferred to the next meeting in order to give delegations time to study that amendment.

It was so decided.

12. The CHAIRMAN noted that the items on the agenda for the meeting had been dealt with. He invited the members of the Committee to present their observations on other articles of the draft.

Article 20 (End of the functions of a special mission)

13. Mr. SPERDUTI (Italy) said he would welcome clarification by the Expert Consultant of article 20 concerning the end of the functions of a special mission. Paragraph 1 of that article dealt with the end of the functions of a special mission, whereas paragraph 2 referred to the termination of special missions in the event of the severance of diplomatic relations. He wondered whether it would not be preferable to use the same wording for both paragraphs, unless the difference in terminology was justified by some particular consideration.

14. Mr. BARTOS (Expert Consultant) replied that the International Law Commission had probably wished to indicate that, while special missions ceased to exist once their functions had ended, the situation was not the same in the event of the severance of diplomatic relations. Just as the existence of diplomatic relations was not necessary for the sending of a special mission, the severance of those relations did not of itself have the effect of terminating the functions of the special mission and consequently did not terminate the mission.

15. The Commission had taken pains to deal with the matter in two separate paragraphs, for it did not share the view of some jurists who considered that the severance of diplomatic relations automatically terminated the special mission. It had therefore specified that the severance of diplomatic relations "shall not of itself" have the effect of terminating special missions. Of course, both the sending State and the receiving State were authorized to terminate a special mission or to regard it as terminated, but in that case, as provided for in paragraph 1 (d) and (e), the State concerned must notify the other State that the functions of the special mission had ended. It was the expression of the wishes of the States concerned that terminated the existence of special missions.

16. The Commission had merely sanctioned a practice that had come to be applied between States where-

by the special mission, with the consent of the receiving State, had been left the responsibility for repatriating the nationals of the sending State after the severance of diplomatic relations. There had been numerous cases of that kind after the Second World War, where special missions had carried out repatriation operations with the help of certain international organizations, particularly the Red Cross.

17. It had been pointed out that some treaties provided for the termination of the special mission in the event of the severance of diplomatic relations. In the opinion of the Commission, however, the termination of the special mission in such an event was due not to the severance of diplomatic relations but to the existence of an explicit clause to that effect in the treaty concluded by the two States. In that connexion, he recalled that when towards the end of 1957 the Minister for Foreign Affairs of the Federal Republic of Germany, Mr. von Brentano, had informed the Yugoslav Ambassador that diplomatic relations between the two countries might be severed, he had specified that such severance would not *ipso facto* have the effect of terminating Yugoslav special missions in the Federal Republic of Germany.

18. The Commission had wished to indicate that an innovation had been introduced in public international law and to show that the mere severance of diplomatic relations no longer had the effect of severing all other relations, as had previously been the case. As for the terminology used, the Commission had considered that the expressions were equivalent and that no difference of meaning was implied. Just as the functions of the special mission ended when the mission ceased to exist, the termination of the mission was the consequence of the cessation of its functions.

19. Mr. SPERDUTI (Italy) thanked the Expert Consultant for the explanations he had provided and noted that the words contained in article 20, paragraph 2, could therefore be replaced by those used in paragraph 1. He also noted that, in article 47, the phrase "the functions of the special mission have come to an end" was used, in the case of breach of diplomatic relations. It was therefore a question of drafting rather than of substance, to which the Drafting Committee's attention might be drawn.

20. Mr. YASSEEN (Iraq) believed there was a difference between the end of the functions of the special mission and the end of the special mission itself, for a special mission could have completed its task but it continued to be a special mission and to enjoy all its privileges and immunities until such time as it left the territory of the receiving State. Since reference had been made to the sending of a special mission—in other words, to its existence—it was normal, in the absence of diplomatic relations between the States concerned, to speak of the end of the mission—and not of the end of its functions—with regard to the effects of the severance of those relations.

Organization of the work of the Committee

21. The CHAIRMAN announced that the time-limit for the submission of amendments to articles 21 to 25 inclusive was Tuesday, 29 October 1968, at 6 p.m.

The meeting rose at 6.30 p.m.