United Nations
GENERAL ASSEMBLY
TWENTY-THIRD SESSION
Official Records

SIXTH COMMITTEE, 1053rd MEETING

Tuesday, 29 October 1968, at 11.5 a.m.

NEW YORK

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.679, A/C.6/L.681)

Article 17 (Seat of the special mission) (continued)

1. Mr. HAMBYE (Belgium), introducing his delegation's amendment (A/C.6/L.679), said that a special mission should not be required to have more than one seat but, if it did, one of those seats should always be chosen as the principal seat so that there would be no uncertainty about where communications to it should be addressed.

2. Mrs. d'HAUSSY (France) pointed out that article 17 was the only provision in the draft Convention in which the word "seat" appeared. That term implied permanency, whereas the special mission was essentially impermanent and temporary. The Drafting Committee should try to find a more appropriate term.

3. Concerning paragraph 3, her delegation seriously doubted whether it was possible for a special mission to be officially established in several different localities. Paragraph 3 dealt with an exceptional situation which there was no need to deal with explicitly in a rule of general character. In any case, paragraph 3 did not seem to reflect quite accurately what the International Law Commission had said in paragraph (6) of its commentary, namely, that it preferred to leave it to the parties to settle by agreement the question of which should be the main seat when a special mission had more than one seat. That implied that the special mission should always have a principal establishment, which should be chosen by agreement between the parties. Her delegation therefore supported the Belgian amendment.

4. Article 17 did not indicate what authority would select the "seat" (with all the reservations called for by that term) of the special mission. The Drafting Committee should try to give the article a more precise wording, for it was important that the receiving State, which had to ensure the security of the special mission, should be in no doubt on the matter.

5. Mr. OGUNDERE (Nigeria) said that, precisely because special missions were by their nature impermanent and temporary, the International Law Commission had chosen to use the permissive word "may" rather than "shall" in paragraph 3. A special mission to a large country might stop at various points across the country, and if one of those points had to be chosen as its principal seat correspondence directed to that seat would not reach the mission at the other places. His delegation therefore preferred the flexibility of the Commission's text.

6. Mr. ROBERTSON (Canada) understood that the Belgian amendment was intended, not to restrict the activity of the special mission, but to provide an address where communications could be sent when the special mission was travelling within the receiving State. In paragraph (3) of the International Law Commission's commentary it was suggested, at least by implication, that the word "locality" meant a particular place. The Drafting Committee should consider replacing it by a word which made that meaning clearer. To make the article more precise, and for convenience in contacting the special mission, the Drafting Committee might consider beginning the article with a statement that, where possible, the seat should be the premises of the sending State's permanent diplomatic mission, and then setting out the exceptions to that rule. In countries such as Canada and the United States of America, where there was a 5,000 mile border, it would be helpful to have a general rule on where the special mission could be reached.

7. Mr. IGLESIAS (Costa Rica) thought it inadvisable to make the choice of a principal seat optional, as was done in paragraph 3. The question was not solely a matter of drafting but also a substantive matter. He therefore supported the Belgian amendment.

8. Mr. BARTOS (Expert Consultant) said that the seat of a special mission was determined by its work; sometimes the special mission's functions had to be performed in various places. Special missions for the demarcation of borders or the delimitation of territorial waters, for instance, might have to examine several sectors; they would choose a seat in each sector as well as an operating headquarters, which would be the principal seat. The number and situation of a special mission's seats depended on the nature of its work and on the mutual agreement of the States concerned.

9. With regard to the choice of the term "locality", the International Law Commission had examined the most complicated and detailed vocabulary in order to find the appropriate word. After designating one of its members to consult philologists, the Commission had been able to find no more suitable words in French than "localité". That term referred to a place which was geographically different from other places. A localité might contain several lieux—a term which

designated space rather than a geographical place. The expression "chef-lieu", which had also been suggested, had a different meaning. The Sixth Committee might try to find a better word, but in any event the word used should be a geographical designation. In English, the word "town" suggested a populated place or city, and the Commission had therefore chosen the term "locality". Before selecting that term the Commission had consulted experts in an effort to find accepted technical expressions.

10. The Commission had also considered the question whether a special mission should have its seat in the premises of the sending State's permanent diplomatic mission. In most cases, the seat of the special mission was not in the permanent diplomatic mission but at the place where it was to perform its functions. Thus a special mission on technical matters would have seats at the factories, laboratories or other places where its tasks were to be performed rather than at a political capital of the receiving State.

11. Paragraph 1 of article 17 gave the States concerned an opportunity to choose the seat of the special mission by agreement. Several members of the Commission had urged that approach because the choice of a seat might have political or strategic significance. If there was tension between the receiving and sending States, they would not be liberal in their choice of seats, while if there was no tension they would be more liberal. Thus the problem was not so much technical as political. In drafting article 17, the Commission had tried to bear in mind the realities of the relationships among States.

12. It had been pointed out in the Commission that the receiving State traditionally required the seat of a special mission to be where the Ministry of Foreign Affairs of the receiving State was situated, in order to simplify the receiving State's task. Some States wanted to give the receiving State predominance in selecting the seat; others replied that the sending State had a sovereign right to choose the seat. As both the sending State and the receiving State obviously had sovereign rights in the matter, the text of paragraph 2 had been adopted as a compromise solution.

13. Mr. DADZIE (Ghana) said that the most important characteristic of a special mission under the draft Convention was its temporary character. The comprehensive nature of some of the provisions of the draft Convention, and especially of article 17, was leading to the establishment of rules for special missions which would seem more suitable for permanent diplomatic missions. He was certain that that was not the Committee's intention. The emphasis on the seat or headquarters of special missions was quite irrelevant; notification of the site of the special mission would seem to be the only requirement and that was already provided for under article 11, paragraph 1 (f), which stated that the Ministry of Foreign Affairs should be notified of the site of the premises occupied by the special mission and any information that might be necessary to identify them. If the special mission wished to go to another place, it had only to notify the Ministry of Foreign Affairs. His delegation did not consider the terms "seat", "principal seat" and "locality" appropriate for special missions, in view of the temporary character of such missions.

14. Despite the explanations given by the Expert Consultant, his delegation considered that the situation covered by article 17 did not call for rigid codification and should be left to ad hoc regulation according to the circumstances and by agreement between the sending State and the receiving State. His delegation would therefore prefer a revision of the whole article, although, in deference to the hard work done by the International Law Commission, it would not make a formal proposal for such a revision.

15. Mr. ENGO (Cameroon) said that he welcomed article 17, not because it would impose certain duties or regulate certain activities, but because it was in keeping with the spirit of the draft Convention, which sought to reduce resort to certain well-known practices which were gaining currency.

16. The purpose of the Belgian amendment was said to be to pin-point the place where the special mission could be found. At the time of the negotiations for the sending of the special mission, however, the itinerary of the special mission would be made known to the receiving State, so that there would be no difficulty about determining where the special mission would be at any particular time. The word "seat" meant the place where the special mission set up its temporary home. The choice of the special mission's seat would depend on its functions and its duration, as also on convenience. Moreover, if there were no diplomatic or consular relations between the sending State and the receiving State, there would be no permanent mission to make the declaration of the choice of a principal seat. The Belgian amendment therefore gave rise to practical difficulties, and his delegation would support the International Law Commission's text as it stood. Admittedly there might be difficulties in interpreting the terms "seat" and "locality", but those were matters for the Drafting Committee.

17. Mr. OSTROVSKY (Union of Soviet Socialist Republics) said that, while he appreciated the Belgian wish to make the wording of article 17 more specific, he felt that the more flexible text prepared by the International Law Commission was preferable. As the Expert Consultant had explained, it was not necessary or even desirable in all cases for a special mission to choose a principal seat. Although the Belgian delegation had not perhaps intended to stipulate that a special mission must always have a principal seat, that was the impression that its amendment gave. From a practical point of view, communications to a special mission could be addressed to any of its seats, whether or not it had chosen a principal seat.

18. With regard to the terminology employed in article 17, the Committee should realize that it would be difficult to improve on the terminology chosen by the Commission on the basis of lengthy research and expert advice.

19. Mr. DABIRI (Iran) agreed with the French representative that the word "seat" should be replaced by some term more appropriate to the temporary nature of special missions. He hoped that the Drafting Committee would be able to suggest one.

20. The CHAIRMAN put to the vote first the Belgian amendment, then the text of article 17.

The Belgian amendment (A/C.6/L.679) was rejected by 34 votes to 17, with 36 abstentions.

Article 17 was approved by 79 votes to none, with 8 abstentions.

21. Mr. MULIMBA (Zambia), explaining his vote, said that his delegation had supported the Belgian amendment because it made the meaning of the text clearer. It had voted in favour of article 17 on the understanding that the term "seat" meant the official or principal address at which a special mission might be contacted. He hoped that the Drafting Committee would consider using a formula which stipulated that a special mission, when working in more than one location, should have an official or principal address.

22. Mr. VEROSTA (Austria) said that his delegation had voted in favour of the Belgian amendment because difficulties would arise in the application of various other articles—for example, article 25 concerning the inviolability of the premises of a special mission—if it was not indicated where the principal seat of the mission was situated. It was also essential that the various governmental organs of the receiving State should be given that information.

23. Mr. RATTANSEY (United Republic of Tanzania) said that his delegation had voted in favour of the Belgian amendment because it would have removed an ambiguity in the International Law Commission's text. It was preferable that one of a special mission's seats should be designated as its principal seat to which communications could be addressed. Nevertheless, his delegation had not voted against the Commission's text, since cases where no main seat was agreed upon were rare.

24. Mr. BILGE (Turkey) said that his delegation had been unable to vote in favour of article 17, having the same objections to it as those the Austrian delegation had just stated.

Article 6 (Sending of special missions by two or more States in order to deal with a question of common interest) (continued) and Article 18 (Activities of special missions on the territory of a third State)

25. Mr. MULIMBA (Zambia), introducing his delegation's amendment to article 18 (A/C.6/L.681), reminded the Committee that the United States delegation had agreed to the deferment of a vote on its proposal for the deletion of article 6 until the Committee considered article 18. Although many delegations had felt strongly that article 6 was merely a description of the practice of some States and did not lay down any legal norm, the debate on article 6 had shown that other delegations recognized the need to make provision for cases where a limited number of States dealt with a question of common interest through the institution of special missions. His delegation's amendment, which was the result of consultations with several other delegations, endeavoured to meet that need.

26. The amendment had not been submitted as a new formulation of article 6, because the time for the submission of amendments to article 6 had expired. His delegation had no rigid views on where it should be inserted in the draft Convention. If the Committee so wished, the Zambian text could replace article 6. On the other hand, if it was inserted as an additional paragraph in article 18, it would not disturb the structure of that article. That was a question which could be dealt with by the Drafting Committee.

27. His delegation had submitted its amendment in a spirit of compromise and was willing to consider any changes in wording which would better express the underlying principle.

28. Mr. ROSENSTOCK (United States of America) said that he would like the Zambian representative to explain the purpose of his amendment. If the amendment established a new norm, i.e., the requirement of formal prior consultations in the cases covered, it differed in that point from the International Law Commission's text of article 6, and such a formal requirement would be of doubtful utility. If that was not the sponsor's intention and the new paragraph was intended to be merely a description of existing practice, his delegation still had doubts about the wisdom of including it, since it might be misinterpreted. If the difference between the new paragraph and the Commission's text of article 6 was only a question of drafting, his delegation would not object to the entire question of article 6, including the Zambian suggestion, being referred to the Drafting Committee.

29. Mr. MYSLIL (Czechoslovakia) said that the Zambian amendment fulfilled the same purpose as article 6 and expressed the same idea in a more acceptable form. His delegation would have no objection to its inclusion, but it still felt that such a provision would be a repetition of article 2 in a modified form.

30. The wording of paragraph 3 of article 18 was not entirely clear. That paragraph had been added by the International Law Commission at a late stage, at the request of certain Governments, in order to make it clear that a third State should not be obliged to act as a receiving State in such matters as the granting of privileges and immunities unless it so wished. Nevertheless, special missions meeting on the territory of a third State would expect to be granted basically the same privileges and immunities as in any other receiving State. Such a State should therefore be regarded as a receiving State rather than as a third State; the term "third State" was more properly employed in article 43. Moreover, the principle that in such a case a third State might assume either the same rights and obligations as a receiving State or limited rights and obligations only was already stated in paragraph 2, so that paragraph 3 was superfluous.

31. Mr. MOLINA LANDAETA (Venezuela) said that, although the Committee had decided to consider articles 6 and 18 together, he felt that the relationship between the two articles was rather remote. Article 6 dealt with the sending of special missions by two or more States to another State to deal with a question of common interest to all of them. It was clear from paragraph (2) of the commentary on article 6 that in such cases there was a close legal relationship between the sending State and the receiving State. Article 18, on the other hand, dealt with the activities of special missions on the territory of a third State

which was not itself involved in the issue to be resolved by the mission. In such a case the third State would act as a host State rather than a receiving State and, as provided in paragraph 3 of the article, it could itself determine the terms of its relationship with the sending States.

32. His delegation was in favour of the retention of article 6 as it stood. It reflected international practice in a special case and its inclusion would contribute to the progressive development of international law. For the same reason, his delegation supported the inclusion of the present text of article 18.

33. His delegation could not support the Zambian amendment. The new paragraph was out of place in paragraph 18, because it did not relate to the sending of special missions to a third State. Nor was the Zambian amendment an improvement on the International Law Commission's text of article 6. In his delegation's view, it involved a question of substance and should be put to the vote.

34. Mr. RATTANSEY (United Republic of Tanzania) said that the scheme of drafting adopted by the International Law Commission was correct; articles 6 and 18 related to different situations and should both appear in the proposed Convention. It might be useful, however, if the words "with the latter's consent and with the agreement of all of them" were inserted after the word "State" in article 6. If, in accordance with the United States proposal (1044th meeting), the Committee decided to delete article 6, his delegation would support the Zambian amendment.

35. Mr. ALVAREZ TABIO (Cuba) said that no one had denied that article 6 covered a practice that was common among States. It could be argued that the codification of that practice gave rise to certain difficulties for which no provision had been made in the draft. That argument did not, however, justify the deletion of the article, particularly since the Convention was intended to govern all forms of the sending and functioning of special missions as well as facilities, privileges and immunities. The deletion of article 6 would leave a gap in the Convention because there would be no provision covering the case of three or more States meeting to discuss a matter of common interest. Indeed, if the purpose of articles 4, 5 and 6 was to define specific cases which differed from the general rule enunciated in article 2, it was logical to infer that those provisions were not merely demonstrative but precise and exhaustive. Hence, the deletion of article 6 could be interpreted as a means of excluding from the Convention the case covered by that article.

36. The case covered by article 6 was completely different from that covered by article 18; in the former, the receiving State participated in the work of the special mission, whereas in the latter it did not. It was essential, therefore, that both articles should be maintained and the applicability of both clearly established.

37. The Zambian amendment related to the case covered by article 6 and should not, therefore, be inserted in article 18. Moreover, the first word of the Zambian amendment should be replaced by the word "three", since to say that two or more States could send a special mission to the territory of one of them would be tantamount to repeating the provisions of article 2. Apart from that, however, the Zambian amendment reflected better than the original text the central idea in the International Law Commission's commentary on article 6, which it could replace. It might be useful, too, if the words "with the receiving State" were added at the end of the heading to article 6.

38. Mr. VIALL (South Africa) said that, as drafted by the International Law Commission, articles 6 and 18 were designed to cover different situations. In the situation covered by article 6, the other State was a receiving State in the proper sense of the word and participated actively in the work of the special mission. Article 18, on the other hand, covered a case in which two or more States met on the territory of a third State which, since it did not participate in the work of the mission, was not a receiving State but a bystander which had allowed its territory to be used as a meeting place.

39. His delegation had been among those which had doubted the need for article 6, which dealt with matters which seemed to be regulated by article 2. If article 6 were retained, consideration should be given to the Zambian amendment. That amendment should, however, form the subject of article 6 rather than be included in article 18.

40. Mr. ENGO (Cameroon) said that article 6 should be maintained, since it covered a case different from those covered by articles 2 and 18. The Zambian amendment could not be included in article 18 because it did not relate to the situation in which negotiations between two States were conducted on the territory of a third State. It could, however, replace article 6, if its wording was revised by the Drafting Committee. In particular, the words "one of them" should be replaced by the words "another State".

41. Mr. PINTO (Ceylon) said that article 18 dealt exclusively with the case where two or more States met on the territory of a third State to discuss a matter of interest primarily to the sending States. In such cases, the role of the third State was not that of a receiving State in the strict sense but rather that of a host State. Nevertheless, the position of the host State should be similar to that of a receiving State and it should have the right to give or refuse its consent to the meeting of the special mission and to be fully informed of the activities of such special missions on its territory.

42. The International Law Commission had evidently intended to provide for those rights in paragraphs 1 and 2 of article 18. It was doubtful, however, whether paragraph 3 of the article adequately reflected the Commission's views on the subject, as expressed in paragraph (8) of the commentary on the article. Rather, paragraph 3 seemed to limit the rights given to the host State in paragraph 2 by stating that the host State was to assume the rights of a receiving State only to the extent that it so indicated. It appeared, therefore, that, before the host State could exercize such rights as the right to demand notification and information, it had to take some positive action to assume those rights and state precisely which rights it assumed. Failure to do so would mean that the

sending States were not obliged to transmit notification and information to the host State. That position was unsatisfactory and seemed to run counter to the intentions of the Commission.

43. His delegation did not wish to make a specific proposal on the subject. It wondered, however, whether other delegations were troubled by the apparent content of paragraph 3.

44. Mr. BINDSCHEDLER (Observer for Switzerland) said that there was no reason why article 6 should be deleted. Indeed, it was difficult to see how the Convention could fail to provide for a situation which had assumed such importance in international practice. If article 6 were deleted, the Zambian amendment would have to be inserted in article 18. Preferably, however, both articles should be maintained and the Zambian amendment, which was clearer and more explicit than the International Law Commission's text, should replace article 6.

45. The provisions of article 18 were of great importance, especially for such countries as Switzerland, which frequently acted as hosts to special missions of different States. In the opinion of his delegation, the text proposed by the Commission was adequate. It was possible that paragraph 3 was redundant, but the text would only be improved if it was made clear in that paragraph that the rights and obligations of the third State were those included in the conditions it might impose under paragraph 2.

46. He suggested that, as article 18 related to the sending of special missions, it should be placed after article 6 and renumbered 6 bis. Perhaps the Drafting Committee would consider that possibility.

47. Sir Kenneth BAILEY (Australia) said that articles 6 and 18 were clearly interdependent. His delegation did not deny the value of the ideas and procedures envisaged in those articles and accepted the exposition of the different situations with which they were intended to deal. It had difficulty, however, in perceiving how the procedure envisaged in article 18 differed from that of an ad hoc international conference.

48. As previous speakers had pointed out, the text of the Zambian amendment would require, even for effective consideration, some further amendment.

49. Mr. ROSENSTOCK (United States of America) said that his delegation would have no objection if the Committee agreed to refer all questions relating to article 6, without prejudice, to the Drafting Committee. If such agreement was not possible, the Committee should vote immediately on article 6, in order to save time.

50. Mr. MULIMBA (Zambia) admitted that the wording of his delegation's amendment was imperfect. Zambia was concerned mainly with the principle of the amendment and was prepared to accept the sub-amendments, including that suggested by the representative of Cameroon. It did not insist that its formulation should be put to the vote.

51. The CHAIRMAN, referring to the suggestion made by the United States representative, said that unless the speakers already inscribed on his list waived their right to speak, he could not put article 6 to the vote immediately.

52. Mr. OSTROVSKY (Union of Soviet Socialist Republics) appealed to the United States representative to withdraw his suggestion.

53. Mr. ROSENSTOCK (United States of America) explained that the purpose of his suggestion was to separate article 6 from article 18. His suggestion was that all questions relating to article 6 should be referred, without prejudice, to the Drafting Committee.

54. The CHAIRMAN said that it did not seem possible, at that stage, to separate articles 6 and 18, which the Committee had decided should be discussed together. He suggested that the Committee should refer articles 6 and 18 and the Zambian amendment (A/C.6/L.681) to the Drafting Committee and defer a decision on the matter until it had received the Drafting Committee's advice.

It was so decided.

The meeting rose at 1.20 p.m.

Litho in U.N. 77601—May 1969—2,150