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Draft Convention on Special Missions (*continued*) . . . . . 1

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.728 and Add.1-4)

1. The CHAIRMAN invited the Committee to examine article by article the texts adopted by the Drafting Committee, which would be presented in order by the Chairman of the Drafting Committee.

2. Mr. YASSEEN (Iraq), Chairman of the Drafting Committee, said that the Sixth Committee had referred to the Drafting Committee twenty-nine articles of the draft Convention on Special Missions, namely articles 2 to 29 and article 31. The Drafting Committee had examined them all, and, bearing in mind the decisions taken by the Committee, had adopted the texts reproduced in documents A/C.6/L.728 and Add.1-4.

3. The Drafting Committee had decided to postpone until a later stage of its work the question whether the headings of the articles and parts of the draft should be maintained—subject to any changes deemed necessary—in the future Convention. It had likewise not taken any decision on the form of the headings of the articles it had examined, with the exception of those of articles 3 and 7. In view of the new texts of the two articles, the Drafting Committee had felt that article 3 should be called "Functions of a special mission" and article 7 "Non-existence of diplomatic or consular relations".

4. The Drafting Committee had also postponed examination of the suggestions made in regard to the rearrangement of certain articles or certain provisions of the draft and their place in the future convention.

5. With regard to the preamble and the final clauses, the Sixth Committee had asked the Drafting Committee to prepare a draft preamble, taking into consideration the one prepared by the International Law Commission, and a set of final clauses for the future Convention on Special Missions. Since the Sixth Committee had not completed its examination of the draft articles, the Drafting Committee had not considered it advisable

during the present session to embark upon the preparation of the draft preamble and final clauses of the future convention.

Article 2 (*Sending of special missions*)  
(A/C.6/L.728/Add.1)

6. Mr. YASSEEN (Iraq), Chairman of the Drafting Committee, recalled that the Sixth Committee had approved (1041st meeting) the following wording for article 2: "A State may send a special mission to another State with the consent of the latter, previously obtained through the diplomatic or other agreed channel." The Drafting Committee had deemed it advisable to add the words "or mutually acceptable" at the end of the text in question, after the word "agreed". Its intention had been, in the light of practice, to make the text more flexible with regard to the methods which could be used to obtain the prior consent of the State to which a special mission was to be sent, while avoiding changing the substance of the wording adopted by the Sixth Committee.

7. Mr. LUGOE (United Republic of Tanzania) pointed out that the words "or other agreed channel" presupposed agreement between the parties in one form or another. Hence the addition of the words "or mutually acceptable" as decided by the Drafting Committee might perhaps be superfluous.

8. Mr. YASSEEN (Iraq), Chairman of the Drafting Committee, explained that the purpose of the addition was to make the text clearer and more flexible, since it allowed for the possibility of a channel being used by the interested parties even in the absence of a formal agreement.

9. The CHAIRMAN suggested that, in the absence of any other observations on article 2, the Sixth Committee should adopt the text drawn up by the Drafting Committee.

10. Mr. REIS (United States of America) suggested that the Sixth Committee should be recorded as adopting the article without objection rather than unanimously.

11. The CHAIRMAN accepted the suggestion.

*Article 2 was adopted without objection.*

Article 3 (*Functions of a special mission*)  
(A/C.6/L.728/Add.1)

12. Mr. YASSEEN (Iraq), Chairman of the Drafting Committee, recalled that the Sixth Committee had referred to the Drafting Committee (1042nd meeting) an amendment by Ecuador, Iran, Mongolia and Romania (A/C.6/L.662 and Add.1), and an oral proposal submitted by the representative of Colombia, both designed to mention in article 3 the functions of the spe-

\*Resumed from the 1072nd meeting.

cial mission, as well as its field of activity. After examining the question, the Drafting Committee had decided not to retain the expression "field of activity" but to replace it by the term "functions". It had therefore adopted the following text: "The functions of a special mission shall be determined by the mutual consent of the sending and the receiving State."

13. The CHAIRMAN recalled that the initial text of article 3 had been neither rejected nor approved by the Sixth Committee, but had merely been transmitted to the Drafting Committee along with the proposals concerning the mention of the functions of a special mission.

*Article 3 was adopted without objection.*

*Article 4 (Sending of the same special mission to two or more States) (A/C.6/L.728/Add.1)*

14. Mr. YASSEEN (Iraq), Chairman of the Drafting Committee, said that the Sixth Committee had approved (1043rd meeting) the following wording for article 4: "If a State intends to send the same special mission to two or more States, it shall so inform each receiving State when it seeks its consent." The Drafting Committee had considered it better to replace the beginning of the article by the words "A State which wishes...". In addition, to avoid any ambiguity, it had been decided to replace the phrase "which it seeks its consent" by "when seeking the consent of that State", the Spanish text being left unchanged. Subject to those drafting changes, the text finally adopted by the Drafting Committee was as follows: "A State which wishes to send the same special mission to two or more States shall so inform each receiving State when seeking the consent of that State."

15. Mr. DEBERGH (Belgium) said that his delegation would have preferred that the second sentence of the text proposed for the article by the International Law Commission should be retained, since it expressly provided for the possibility of refusal by the interested States.

16. Mr. YASSEEN (Iraq), Chairman of the Drafting Committee, pointed out that the possibility of such refusal was implicit in the Drafting Committee's text. Refusal by any of the receiving States could be indicated to the sending State when the latter "sought the consent of that State".

17. Mr. SIYOLWE (Zambia) said that, while his delegation approved the wording of article 4 as drafted by the Drafting Committee, it would like to point out that when a sending State decided, following the departure of its mission to several States, that the mission should also visit yet another State, that sending State should so inform the State where the mission was at the time, as well as the other receiving States, and inform the new receiving State of the detailed itinerary of the mission.

18. Mr. YASSEEN (Iraq), Chairman of the Drafting Committee, pointed out that the Drafting Committee had considered every possibility, but had felt that it was unwise to enter into too great detail. The rule of good faith would apply in the case mentioned by the representative of Zambia.

19. Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) said that in the Russian text the final

phrase of article 4 should be changed so as to make it correspond exactly to the expression "when seeking the consent of that State".

20. The CHAIRMAN said that the necessary change would be made in the Russian text.

*Article 4 was adopted.*

*Article 5 (Sending of a joint special mission by two or more States) (A/C.6/L.728/Add.1)*

21. Mr. YASSEEN (Iraq), Chairman of the Drafting Committee, said that, in accordance with the Sixth Committee's decision (1044th meeting), the Drafting Committee had redrafted article 5 in the light of the new wording of article 4. In doing so, it had taken into consideration the comments made on the subject in the Sixth Committee. In the Drafting Committee's view, the text which it had adopted left intact the principle of consultations, since that principle was implicit in the words "shall so inform the receiving State when seeking the consent of that State". The text adopted by the Drafting Committee was as follows: "Two or more States which wish to send a joint special mission to another State shall so inform the receiving State when seeking the consent of that State".

22. Mr. DEBERGH (Belgium) said that in the case of article 5, too, his delegation thought it would be preferable to state expressly, as the International Law Commission had done in the text it had originally proposed, that a receiving State could refuse to receive a joint mission. That possibility was implied in the Drafting Committee's text, but it should be stated explicitly.

23. Mr. YASSEEN (Iraq), Chairman of the Drafting Committee, said that the explanation he had given on that point in regard to article 4 applied equally to article 5.

*Article 5 was adopted.*

*Article 6 (Sending of special missions by two or more States in order to deal with a question of common interest) (A/C.6/L.728/Add.3)*

24. Mr. YASSEEN (Iraq), Chairman of the Drafting Committee, said that, in accordance with the Sixth Committee's decision (1053rd meeting), the Drafting Committee, in considering article 6, had taken account of the wording of article 18 and also of the Zambian amendment to that article (A/C.6/L.681). It had decided to retain the principle set forth in article 6 but to redraft the International Law Commission's text so as to make it clearer. Accordingly, the words "with the consent of that State obtained in accordance with article 2" had been inserted after the words "to another State" and the words "in order to deal, with the agreement of all of them, with a question of common interest" had been replaced by the words "in order to deal, with the agreement of all of these States, with a question of common interest of all of them". The phrase "question of common interest to all of them" had been taken from the Zambian amendment.

25. Mr. REIS (United States of America) said that article 6 had been the subject of a lengthy discussion in the Drafting Committee. His delegation thought that the provision contained in that article was unfortunate, since it might appear to limit unduly the sovereignty

of States. If State A and State B both wished to send a special mission at the same time to State C, State A would be required under the terms of article 6 to obtain the consent not only of State C but also of State B. It was difficult to understand why it should be obliged to obtain the consent of State B. For that reason, his delegation thought that the rule laid down in article 6 would create an unfortunate anomaly.

26. Mr. YASSEEN (Iraq), Chairman of the Drafting Committee, explained that the Drafting Committee had thought that the process described in article 6 should be broken down into two stages. The first stage was the sending of the special missions; at that stage, the receiving State might agree to receive each of the special missions sent by the sending States. The second stage was the joint consideration of a question of common interest to the sending States and the receiving State, and the decision on that point would have to be taken by all the States concerned. The consent of all of them was essential precisely because they were proposing to consider together a question of common interest. The Drafting Committee did not believe that article 6 would in any way affect the sovereignty of States.

27. Mr. SECARIN (Romania) thought that article 6 should be included in the draft Convention. The most important aspect of the provision contained in the article was the position of the receiving State. When the latter agreed to receive special missions sent by two or more other States, it would have to know whether all those States were willing to deal with the question which was of common interest to them. It should also have complete freedom in expressing its consent to receive such special missions. In other words, the receiving State should not be placed in a position in which it would agree to receive in its territory special missions from two or more other States and would find that it was only then that the special missions tried to agree whether the question under discussion was or was not of common interest to them. The receiving State should be free to impose conditions for its consent. In the light of those considerations, his delegation thought that article 6 should be retained.

28. Sir Kenneth BAILEY (Australia) said he also felt that article 6 was useful, since it balanced article 5.

29. The Chairman of the Drafting Committee seemed to interpret article 6 as meaning that the special missions would be dealing together with a question of common interest to all the States, the sending States and the receiving State alike. However, it was difficult to see how that interpretation was justified by the actual text of article 6. The article did refer to missions sent at the same time to deal with a question of common interest, but it did not say whether the missions should deal with the question jointly. If it did, the need to obtain the consent of all the States concerned would be more understandable.

30. Mr. YASSEEN (Iraq), Chairman of the Drafting Committee, said that in his view the idea of joint consideration by the special missions of a question of common interest was implicit in article 6, and the Drafting Committee had drafted the text of the article on the basis of that interpretation.

31. Mr. DADZIE (Ghana) said that he shared the United States representative's view. His delegation wished to repeat the reservations it had already expressed (1045th meeting) in regard to the principle that sending States should be obliged to conclude an agreement between themselves in order to send special missions to the territory of a receiving State at the same time to deal with a question of common interest.

32. Sir Kenneth BAILEY (Australia) said that he accepted the explanation given by the Chairman of the Drafting Committee but still thought that the Drafting Committee was adding something to the text. Perhaps that additional element should be expressly stated in the wording of article 6.

33. Mr. YASSEEN (Iraq), Chairman of the Drafting Committee, said that some members of the Drafting Committee had suggested inserting the word "jointly" after the word "deal", but the suggestion had not been adopted, since other members of the Committee had felt that the wording of article 6 already contained that idea by implication. As representative of Iraq, he would have no objection to the suggestion made by the representative of Australia.

34. Mr. REIS (United States of America) proposed that the word "jointly" should be inserted after the word "deal".

35. Mr. LUGOE (United Republic of Tanzania) and Mr. SIYOLWE (Zambia) supported the proposal.

36. Sir Kenneth BAILEY (Australia) said he was grateful for the spirit in which his suggestion had been taken up; however, he thought it might be preferable not to vote on the United States proposal but rather to ask the Drafting Committee to reconsider article 6 in the light of the comments which had been made.

37. Mr. ENGO (Cameroon) agreed with the representative of Australia that it would be better to ask the Drafting Committee to improve the wording of article 6, since the word "jointly" was not perhaps quite suitable. Accordingly, he requested the United States representative not to press his proposal but to submit it merely as a suggestion, so that article 6 could be referred back to the Drafting Committee.

38. The CHAIRMAN thought that that procedure would be unwise. In order to avoid prolonging the discussion unduly, it would be better for the Sixth Committee to take a decision itself.

39. Mr. ENGO (Cameroon), supported by Mr. SIYOLWE (Zambia), suggested that the Committee should postpone its decision until a later date, so that members could enter into consultations and give some thought to the matter.

40. Mr. IBONGO (Equatorial Guinea) observed that, at least in the Spanish version of article 6, the word "conjuntamente" would be superfluous. He therefore supported the suggestion made by the representative of Cameroon.

41. The CHAIRMAN proposed that the Committee should postpone a decision on article 6 until it came to consider article 18.

*It was so decided.*

*Article 7 (Non-existence of diplomatic or consular relations) (A/C.6/L.728/Add.1)*

42. Mr. YASSEEN (Iraq), Chairman of the Drafting Committee, said that the Drafting Committee had adopted without change the text of article 7 which had been referred to it by the Sixth Committee (1049th meeting), i.e., the former paragraph 1 of the wording proposed for that article by the International Law Commission. Since paragraph 2 of that wording had not been retained, the Drafting Committee had thought it advisable to amend the title of article 7 by deleting the words "and non-recognition".

43. Mr. SECARIN (Romania) recalled that his delegation had been in favour of retaining article 7, paragraph 2, as drafted by the International Law Commission. He wished to make it clear that his endorsement of the text of article 7 adopted by the Drafting Committee in no way affected the stand taken by his delegation as a matter of principle at the 1046th meeting, when it had stated that paragraph 2 correctly reflected the practice of States, i.e., that a State could send a special mission to a State, or receive one from a State, which it did not recognize.

44. Mr. DELEAU (France) was of the opinion that it would have been desirable to specify that a State could exchange special missions with another State which it did not recognize but that that did not imply recognition. His delegation recognized that the Sixth Committee had not adopted that course because it had not wished to take a stand on the substance of the question.

*Article 7 was adopted.*

*Article 8 (Appointment of the members of the special mission) (A/C.6/L.728/Add.3)*

45. Mr. YASSEEN (Iraq), Chairman of the Drafting Committee, drew attention to the drafting amendments which had been made in the text (approved for article 8 by the Sixth Committee (1051st meeting)). First of all, the word "necessary" had been inserted in the first sentence before the word "information". Secondly, in the French text, the words "*et en particulier*" had been replaced in the same sentence by the words "*et notamment*". Finally, in the English text, the word "refuse", which had appeared in the second and third sentences, had been replaced by the word "decline". Those amendments had served to bring the three texts of article 8 more into harmony with one another.

46. Mr. ALCIVAR (Ecuador) said that, although he had no objection to the text adopted by the Drafting Committee, he reserved his delegation's position in the vote on article 8 in the plenary Assembly.

47. Mr. MYSLIL (Czechoslovakia) said that he also reserved his delegation's position; article 8 had the defect of unduly favouring the receiving State and placing too many limitations on the rights of the sending State.

48. Mr. OSTROVSKY (Union of Soviet Socialist Republics) said that he had no comment to make on the work which the Drafting Committee had done under its terms of reference; however, his delegation, whose position on the substance of the question had not changed, did not approve of the wording of ar-

title 8, which it had voted against at the 1051st meeting.

49. Mr. ZEMANEK (Austria) noted that there were some differences in wording between the last sentence of article 8 and article 12, paragraph 1. He thought it would be advisable to use in the last sentence of article 8 the words "*non grata* or not acceptable" which appeared in the last sentence of article 12, paragraph 1 (A/C.6/L.728/Add.1).

50. Mr. MARTINEZ CARO (Spain) observed that the adjective modifying the word "information" was not the same in the three texts. The English text had the word "necessary", the Spanish "*relevante*" (*pertinente*) and the French "useful" (*utiles*). He suggested the retention of the word "relevant", which seemed the most appropriate.

51. Mr. YASSEEN (Iraq), Chairman of the Drafting Committee, said that, while it was true that the three adjectives mentioned by the representative of Spain were not quite identical, the Drafting Committee had felt that they meant the same thing. The question was one of translation and should be given further study with the help of the language services of the Secretariat.

52. With regard to the observation made by the representative of Austria, he explained that in using the words "decline to accept any person" the Drafting Committee had chosen a broad expression which covered both persons who were declared *non grata* and those who were declared not acceptable.

53. Mr. SECARIN (Romania), recalling that his delegation had favoured the wording proposed for article 8 by the International Law Commission, reserved his delegation's position in the vote on that article in the plenary Assembly.

54. Mr. MYSLIL (Czechoslovakia) asked for clarification concerning the nature of the decisions being taken by the Sixth Committee at the present time. While he recognized that the Drafting Committee's report could be adopted in the absence of objections, he felt that the same procedure could not be adopted in the case of the articles themselves.

55. The CHAIRMAN observed that the Drafting Committee's report was composed only of the texts of the articles which it had adopted. The Sixth Committee had already adopted some them, and it seemed difficult to consider adopting any other procedure. Delegations could, of course, make reservations or submit their objections in the plenary Assembly, but the Sixth Committee, for its part, had to take action on the texts which were submitted to it.

56. Mr. OSTROVSKY (Union of Soviet Socialist Republics) said that the Czechoslovak representative's observation coincided with his own feelings. It was far from certain that the Committee could adopt or approve an article which had already been adopted, since it was merely taking a decision on the results of the Drafting Committee's work. A possible solution to the problem would be to decide that the Committee should take note of article 8 as adopted, on the understanding that the positions which had been set forth in the debate on that article at first reading remain unchanged. That would make it unnecessary

for delegations to state their positions again, and the Sixth Committee's decision would not entail any change of attitude.

57. The CHAIRMAN observed that the reservations which had been made would appear in the record of the meeting and could be expressed again in the plenary Assembly.

58. Mr. RWAGASORE (Rwanda), referring to the problem of wording mentioned by the representative of Spain, said that it might be inadvisable to rely on the Secretariat for the choice of equivalent terms without any supervision by the Sixth Committee. He therefore suggested that any decision on article 8 should be postponed until the Secretariat indicated the wording which it proposed.

59. The CHAIRMAN pointed out that the Committee would resume consideration of the entire text of the

draft Convention on Special Missions at the twenty-fourth session of the General Assembly. Delegations would then have complete freedom to rectify discrepancies after consultation with the Secretariat services concerned.

60. Mr. ALCIVAR (Ecuador) said that, inasmuch as article 8 would be debated in the plenary Assembly, comments made at the present stage should relate only to questions of drafting. The Committee could certainly adopt the texts prepared by the Drafting Committee, since delegations were free to express their objections during the debate in the plenary Assembly.

61. The CHAIRMAN confirmed that decisions taken by the Sixth Committee were without prejudice to positions subsequently adopted by delegations.

*Article 8 was adopted.*

*The meeting rose at 12.45 p.m.*

