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*Chairman:* Mr. Gonzalo ALCÍVAR (Ecuador).

**AGENDA ITEM 87**

**Draft Convention on Special Missions (*continued*) (A/6709/Rev.1 and Corr.1, A/7375; A/C.6/L.745, A/C.6/L.747)**

*Article 1 (Use of terms) (continued)*  
(A/C.6/L.751 and Corr.1)

1. Mr. YASSEEN (Iraq), Chairman of the Drafting Committee, said that the Drafting Committee had examined the two points referred to it at the 1127th meeting. With regard to the Spanish delegation's suggestion that the word "*último*" should be deleted from the Spanish version of the text proposed in document A/C.6/L.751, the Drafting Committee had consulted its Spanish-language members, and apparently the text would mean precisely the same with or without it. That being so, it had preferred to retain the word, so as to preserve the symmetry of the French and Spanish versions. As to the use of the phrase "representing the State" as a translation of the words "*ayant un caractère représentatif de l'Etat*", the Drafting Committee had considered the question and had consulted the relevant services of the Secretariat, but a more satisfactory translation had not been forthcoming. The Drafting Committee had therefore had to fall back on that phrase as the best possible rendering. It had however decided to place it between commas (see A/C.6/L.751/Corr.1), thus bringing the English version into line with the French and Spanish versions. Its proposal for the English version was accordingly to be taken by the Committee as being in that form, and he wished to emphasize very strongly the Drafting Committee's view that the addition of the commas in no way altered the meaning of the English version and that it had exactly the same significance as the French version.

2. Mr. NALL (Israel) said that the text proposed by the Drafting Committee embodied the minimum conditions necessary before a special mission could be considered as such. It did not, however, take account of the very important notion introduced in article 5, namely the sending of a joint special mission. Such missions were quite different from special missions sent by one State. Hence, his delegation considered that the notion of joint missions should be spelt out in the definition under discussion. The

definition of a special mission would satisfy his delegation if it was worded to the effect that a special mission was a temporary State-representing mission sent by one or jointly by two or more States to another State with the consent of the latter for the purpose of dealing with it on specific questions or of performing in relation to it a specific task. The point he had raised was essentially a drafting matter; his delegation had refrained from submitting a formal amendment in order not to delay the work of the Committee. It could, of course, be held that the question of joint missions was implied in the notion of consent, but even if a thing was self-evident it might be preferable to state it explicitly.

3. Mr. ALVAREZ TABIO (Cuba) said that what the Committee had to decide was whether the definition proposed by the Drafting Committee met the present needs of the international community and also represented a fair balance between the interests of the sending and receiving States. The International Law Commission's definition had been accused of giving undue emphasis to the sending State's interests by leaving it to the latter to decide unilaterally whether a particular mission was a special mission entitled to the benefits of the draft Convention; all the receiving State could do was to accept or reject the mission. His delegation considered that the Drafting Committee's text swung the balance too far in the opposite direction: the receiving State's consent, not previously constituent in character, had been made essential to the existence of a special mission for the purposes of the draft Convention, since the receiving State could not only reject a mission but could also decide whether it would enjoy the benefits of the Convention. In practice, that too would be a case of unilateral discretion. The Drafting Committee's text posed the problem correctly but solved it in a way incompatible with the principle of equality of rights. It did contain the necessary elements for determining whether a special mission should be considered as such: the sending of a mission by one State to another, its State-representing character, temporary nature and specific purpose. But it then added an element which was a condition for something quite different, namely the subject-matter of article 2. That completely nullified the International Law Commission's efforts to formulate a definition containing the necessary objective conditions for identifying a special mission. The definition proposed by the Drafting Committee was tantamount to saying that a special mission was any mission accepted as such by the receiving State. That interpretation was strengthened by the fact that the element added by the Drafting Committee, namely the consent of the receiving State, was repeated in article 2, since repetition of the condition of the receiving State's consent in two successive articles would suggest that the intention was to transform a condition for the sending of a special mission into a condition for its very existence. He

did not think that such a construction was intended by the Drafting Committee; in the future, however, it would be the words of the instrument and not the Drafting Committee's intentions which would govern its interpretation. His delegation would be unable to vote in favour of the Drafting Committee's text.

4. Mr. SANTISO GALVEZ (Guatemala) said that his delegation, as part of the Latin American group, had originally favoured the definition proposed by the International Law Commission. Considerable negotiation and painstaking efforts by the Drafting Committee had been needed to produce a generally admissible alternative. The Drafting Committee's text represented a compromise and his delegation would accept it as such.

5. Mr. ROMPANI (Uruguay) asked for clarification on two points which he felt would be important for the future interpretation of the Convention. Firstly, the Spanish version of the International Law Commission's proposed definition and of the French delegation's amendment (A/C.6/L.658) had contained the word "*toda*". The word had been replaced by "*una*" in the Spanish version of document A/C.6/L.751. Was the substitution merely a question of style or did it represent a limitation? Secondly, was he correct in assuming that technical missions would be covered by the provision in article 1, sub-paragraph (a)?

6. Mr. YASSEEN (Iraq) said in reply that he could only speak for his delegation and not for the Drafting Committee. On the first point, he thought the difference was merely stylistic. As to the second, a technical mission consisting of experts rather than diplomats would have the status of a special mission if it fulfilled the conditions laid down in the definition.

7. Mr. ŠAHOVIĆ (Yugoslavia) said that the text proposed by the Drafting Committee represented a compromise between the divergent views expressed in the Committee. The diversity of opinion on the subject reflected not only the existence of different legal systems but also the fact that States were considering what their position would be in the event of accession to a multilateral convention on the subject of special missions. Since the Drafting Committee's text opened the way to the more general acceptance of the Convention as drafted by the International Law Commission, his delegation would vote in favour of it, but it could also have supported the Commission's definition unreservedly. The fact that the Drafting Committee had introduced the notion of a legal relationship between the sending and receiving States was attributable to the specific nature of special missions and the fact that there was no consolidated body of practice on the subject. For the same reasons, the Drafting Committee had strengthened the Commission's notion of representative status. Another important point was that approval of the Drafting Committee's definition would obviate the need to embody the element of consent in any of the draft articles still to be discussed by the Sixth Committee.

8. Mr. CASTREN (Finland) said that approval of the Drafting Committee's definition would remove one of the major obstacles to the acceptance of the draft Convention as a whole. His delegation favoured the definition. The Drafting Committee's strengthening of the notion that a

special mission represented the sending State was a desirable feature. With regard to the question of consent, his delegation would have preferred it to be confined to article 2, because it was not strictly necessary for the definition of a special mission as such. However, in view of the importance which many delegations attached to the notion of consent, Finland would not oppose its inclusion in the definition. It nevertheless suggested that, in order to avoid repetition, the Drafting Committee should re-examine article 2 with a view to restricting it to a statement of the procedure required for consent. For that purpose, that article could be worded along the following lines: "The consent provided for in article 1, sub-paragraph (a), for the sending of a special mission of one State to another State shall be obtained beforehand through the diplomatic channel or by any other agreed or mutually acceptable means."

9. The CHAIRMAN invited the Committee to vote on the Drafting Committee's text of article 1, sub-paragraph (a).

*The Drafting Committee's text of article 1, sub-paragraph (a), (A/C.6/L.751 and Corr.1) was adopted by 87 votes to none, with 5 abstentions.*

10. Mr. DELEAU (France) said that his delegation had voted in favour of the text of article 1, sub-paragraph (a), as adopted by the Drafting Committee, because that text comprised what it considered to be the two essential concepts of representative status on behalf of the sending State and the consent of the receiving State. So far as representative status was concerned, the text adopted expressed and spelled out more clearly the intentions of the International Law Commission as reflected in its debate, in the draft of article 1 (a) which it had prepared and in the commentary thereon. In that connexion, he cited statements made by Mr. Ago and Mr. Kearney at the nineteenth session of the Commission.<sup>1</sup> Mr. Ago had explained that the Drafting Committee which had prepared the draft definition had decided that the only solution was to submit a restrictive definition stating that a special mission had a representative character. Mr. Kearney had said that the introduction of the idea of the representative character of special missions into the definition would make it cover missions which represented the State as a whole in dealings with other States, but not visits to other countries by groups of government officials concerned with limited technical matters not involving representation of the State. Those remarks echoed the ones made by Mr. Bartos in his fourth report, to the effect that in its strict sense *ad hoc* diplomacy should consist of the representation of the State as the lawful holder of sovereignty vis-à-vis the other State and not be concerned with matters in which the State did not appear as the holder of sovereignty or with relations with particular individuals or bodies corporate which were not subjects of public international law.<sup>2</sup> Those statements conveyed the concept of representative status, as the French delegation understood it. The text of the International Law Commission had not, however, reflected those ideas explicitly enough and the Commission itself had felt the need to explain them in its commentary, where it stated

<sup>1</sup> See *Yearbook of the International Law Commission*, 1967, vol. I, 932nd meeting, paras. 72 and 90 respectively.

<sup>2</sup> *Ibid.*, vol. II, documents A/CN.4/194 and Add.1-5, para. 159.

that the special mission must represent the sending State and that, in the Commission's view, that was an essential distinguishing characteristic of special missions, by which a special mission could be distinguished from other official missions or visits.

11. His delegation agreed with the International Law Commission that consent was a basic prerequisite for a special mission. The consent of the receiving State was essential in order for a mission to enjoy the status of a special mission. That view seemed to be widely shared by the delegations to the Sixth Committee, as could be seen from the discussions held in 1968 on the subject of article 2 (1040th and 1041st meetings). Moreover, since the principle of consent was an essential principle of the Convention, underlying the draft as a whole and expressly stated in several of its provisions, it was natural and necessary that it should be included in article 1, sub-paragraph (a). The purpose of that article was to establish what constituted a special mission within the meaning of the Convention and thus to define the sphere of application and the scope of the Convention as a whole. It was therefore essential for the concept of consent to be included in the provision in question.

12. Although the text adopted by the Drafting Committee was not as precise as his delegation would have liked, it had been able to support it, in a spirit of compromise and bearing in mind that the text embodied, beyond any doubt, the principles of "representativeness" of the sending State and consent of the receiving State.

13. Mr. UOMOTO (Japan) said that his delegation had voted in favour of the Drafting Committee's text of article 1, sub-paragraph (a), which was a considerable improvement on the Commission's text. The present wording was a more accurate reflection of the Commission's intention and brought out more clearly the essential criteria of representative status and consent. The text had brought out in an explicit manner the element of consent which already underlay and was implicit in the draft articles prepared by the Commission, and in article 2 in particular. That was a very important improvement, since, in the view of his delegation, it brought out clearly the constitutive nature of a special mission, and possible dispute between the sending and the receiving States in the application of the Convention could thus be avoided.

14. Mr. MARTINEZ CARO (Spain) said that his delegation attached great importance to the definition contained in article 1, sub-paragraph (a). Quite apart from the doctrinal value of the definition of a juridical concept, the application of the draft Convention as a whole would depend upon it. The definition and the regulation of the legal status of special missions was of vital importance for meeting the needs of future diplomacy. In the main, his delegation had consistently supported the Commission's text of the draft articles. However, it had supported the text of article 1, sub-paragraph (a), with the two changes made by the Drafting Committee because the changes further clarified the idea which the Commission had intended to convey. His delegation understood the words "representing the State" as meaning that the special mission represented the State as a single entity, regardless of the composition of the mission. The inclusion of the words

"with the consent of the latter" made it quite clear that a special mission must be established by tacit or express agreement and could under no circumstances be imposed without agreement, and that its purpose was to serve as a supplementary channel of diplomacy.

15. Mr. ROBERTSON (Canada) said that the 1961 Vienna Convention on Diplomatic Relations established clearly the principle that a permanent diplomatic mission might not be opened or an ambassador take up his function without the prior approval of the receiving State. In his delegation's view, the draft articles on special missions, which served to supplement the 1961 Vienna Convention, must establish clearly the same principle in respect of special missions. There seemed to be general agreement in the Committee that the definition of the term "special mission" in article 1, sub-paragraph (a), the requirement of consent in article 2, the various articles referring to notification requirements, the requirement in article 15 that a special mission must conduct its business through the Ministry of Foreign Affairs of the receiving State unless otherwise agreed, and the articles which authorized the receiving State to terminate the special mission or to declare that a member of the special mission was not acceptable—all served to confirm the principle, already existing in customary international law, that one State might not send its representatives to the territory of another State, to deal in matters which the receiving State considered to be of official interest to it, without first obtaining the approval of the receiving State. It was for the receiving State to determine whether the business which the representatives of the sending State proposed to conduct was of essential interest to it and whether, in consequence, its consent was necessary before the representatives of the sending State might enter its territory for the purpose of transacting such business. In the view of the Canadian Government, that fundamental principle was now adequately covered in the draft Convention by the provisions of the various articles to which he had referred.

16. Turning to the actual definition contained in article 1, sub-paragraph (a), as adopted, he pointed out that agreement on a definition would not of itself solve all the outstanding problems relating to the scope of the immunities and privileges to be granted to special missions. Although the definition as adopted was a considerable improvement on the text originally prepared by the Commission, it must still be regarded as a compromise when viewed against some of the alternative concepts advocated by a number of States at the previous session, in particular that of a two-tier system of special missions. Before giving a final opinion as to the degree to which the definition was successful in meeting its particular concerns, his Government would have to await the development of State practice in respect of the future Convention and see how the present definition worked out in practice. Nevertheless, his delegation welcomed the fact that the Sixth Committee had arrived at an agreed definition and it had voted in favour of the text adopted by the Drafting Committee.

17. Mr. CHOUEIRI (Lebanon) said that his delegation had voted in favour of the Drafting Committee's text of article 1, sub-paragraph (a), as embodying the three main principles essential to the definition of the term "special

mission", namely that it should be representative of the State, that it was of a temporary character, and that it had a specific task to perform. His delegation, like the French delegation, had considered that the adoption of an agreed definition was of primary importance for the speedy completion of the draft Convention and was gratified that it had now been achieved.

18. Mr. MUNG'OMBA (Zambia) said that his delegation had welcomed the new text of article 1, sub-paragraph (a), prepared by the Drafting Committee but had shared the misgivings voiced by the representative of Israel concerning the omission of any reference to the case of special missions sent jointly by two or more States to a third State. Zambia, as a land-locked country, had to work together with other States and often had occasion to participate with other States in sending special missions. Since the definition contained in documents A/C.6/L.751 and Corr.1 did not reflect the position of joint special missions, his delegation had abstained in the vote.

19. Mr. KOLESNIK (Union of Soviet Socialist Republics) expressed his delegation's satisfaction at the almost unanimous adoption of article 1, sub-paragraph (a). That decision would undoubtedly facilitate the completion of a Convention that would give special missions the necessary protection and establish firm rules for their operation. It was clear from the definition adopted that any mission that was empowered by a State to negotiate on its behalf with another State on any question must be regarded as a special mission and entitled to privileges and immunities under the Convention. The present wording also made it clear that any division of special missions into a higher and a lower category was not consistent with the purposes and principles of the Convention.

20. The statement of the principle of consent in article 1, sub-paragraph (a), was a reaffirmation of the sovereign equality of States and, in his delegation's view, would guard against situations where a special mission might be sent by one State to another and rejected on its arrival by the receiving State or denied full enjoyment of the appropriate privileges and immunities.

21. Although his delegation had been ready to support the Commission's text of article 1, sub-paragraph (a), and had sought its retention in its original form, it had nevertheless voted in favour of the Drafting Committee's text because it was faithful to the underlying philosophy of the original.

22. Mr. REIS (United States of America) said his delegation was pleased that the definition adopted reflected the intentions of the International Law Commission and the remarks made in its commentary on article 1 more closely than the text drafted by the Commission itself. His delegation agreed with the views expressed by Mr. Ago in the Commission, particularly with regard to the need to distinguish between special missions, which should properly be entitled to the high standards provided in the Convention, and "small groups of technicians or other specialists sent from one country to another which did not possess all the characteristics of the representation of States",<sup>3</sup> which should not be entitled to those standards. Not all official

missions or visits and not all diplomatic missions were special missions. Special missions must represent the interests of the State, be temporary in character and have a precise task rather than a general mandate such as that entrusted to permanent diplomatic missions.

23. Mr. STEINER (United Republic of Tanzania) said that his delegation would have supported the original text proposed by the International Law Commission. It had voted for the new text as a compromise and on the understanding that it was the exclusive prerogative of the sending State to determine the representative character of the special mission. The receiving State could not question the decision taken in that respect by the sending State and could only consider whether the other prerequisites existed for regarding the mission as a special mission.

24. Mr. SHAW (Australia) explained that his delegation had voted for the definition submitted by the Drafting Committee on the understanding that, if the receiving State did not consider that a proposed mission would be a temporary mission representing the State and sent for the purpose of dealing with it on specific questions or of performing in relation to it a specific task, it could withhold its consent and the special mission would not come into existence.

25. Mr. ALLOTT (United Kingdom) said that a certain concept of what constituted a special mission emerged from a reading of the International Law Commission's definition in the context of the Convention, from the Commission's commentary, and from its debates. A special mission was a temporary, *ad hoc* mission. The existence of a particular special mission derived from an *ad hoc* expression of mutual consent by the sending and receiving States. A special mission represented the sending State in the same sense that a permanent diplomatic mission did. The normal task of a special mission was one which would ordinarily be performed by a permanent diplomatic mission of the sending State, if one existed in the receiving State or if it had not been decided on that particular occasion that an *ad hoc* mission was required. It was questionable whether the text proposed by the International Law Commission had adequately reflected that concept.

26. The text just adopted clarified two of the elements forming part of the concept. The definition would still have to be read in the context of the Convention and in the light of its legislative history, and difficult marginal cases might arise. However, a body of practice would no doubt develop in regard to the interpretation and application of the definition and it should be possible to give reasonable effect to the definition and appropriate scope and effect to the Convention. It was on that basis that the United Kingdom Government would examine the Convention and would interpret and apply it if the United Kingdom acceded thereto.

27. Mr. JACOVIDES (Cyprus) explained that he had voted for the text submitted by the Drafting Committee, because it had been most likely to obtain the support of the majority of the members of the Committee and was clearer than the original text proposed by the International Law Commission. The concept of representative status was important. The inclusion of a reference to consent in

<sup>3</sup> *Ibid.*, vol. I, 932nd meeting, para. 72.

article 1 highlighted and strengthened that concept, which was also embodied in article 2; it was to be hoped that the element of subjectivity which it entailed would not create any major difficulties.

28. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) said that, although the nature of their tasks might vary, special missions must represent the sending State and act only on its behalf. Despite the fact that they were of a temporary character and had been sent for a specific purpose, special missions should be granted privileges and immunities similar to those accorded to permanent diplomatic missions. The International Law Commission could perhaps have included more characteristics in its definition; however, its wording of article 1(a) contained all the essential criteria. The Byelorussian delegation had voted for the text as modified by the Drafting Committee.

29. Mr. OGUNDERE (Nigeria) said that his delegation had supported the definition in documents A/C.6/L.751 and Corr.1, which corresponded to the philosophy underlying the definition proposed by the International Law Commission. The text took into account the fact that *ad hoc* diplomacy could cover a wide range of subjects and not only political questions. In addition, the inclusion of a reference to consent covered the idea of the sovereign equality of all States. It was to be hoped that when the convention was in force it would not be interpreted restrictively.

30. The CHAIRMAN thanked the Drafting Committee and its Chairman, on behalf of the Sixth Committee, for helping to achieve agreement on a definition of the term "special mission".

*The meeting rose at 12.55 p.m.*