United Nations
GENERAL ASSEMBLY
TWENTY-FOURTH SESSION
Official Records

SIXTH COMMITTEE, 1143rd MEETING

Wednesday, 5 November 1969, at 3.30 p.m.

NEW YORK

CONTENTS

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 and Corr.1, A/C.6/L.747)

Article O (Conferences) (continued) *(A/C.6/L.745/Corr.1)*

1. Mr. USTOR (Hungary) said that his delegation, while welcoming the United Kingdom's effort to enrich the draft Convention, considered that the topic of international conferences deserved more detailed study than the Committee could give it at the twenty-fourth session. It would be inadvisable on practical grounds to include an article on conferences in the draft Convention. The statements made at the 1142nd meeting by the United Kingdom representative and the Expert Consultant had shown how complex it was. The large volume of practice and literature on the subject needed to be taken into consideration. He fully agreed with the Observer for Switzerland that uniform and positive rules of law regulating the status of members of international conferences and members of their secretariats would be preferable to the merely permissive rule represented by the United Kingdom proposal.

2. There were other reasons too for not including an article on conferences in the draft Convention. International conferences could be convened by international organizations or States. The question of international conferences convened by international organizations formed part of the topic of relations between States and international organizations under study by the International Law Commission and at present in the hands of its Special Rapporteur on the subject. The question of international conferences convened by States could be treated likewise, because, although related to the topic of special missions, it bore a much closer relationship to the International Law Commission's topic, particularly owing to the existence of a common secretariat, which did not occur in the case of special missions.

3. Consequently, Hungary considered that the best solution would be to leave the topic of international conferences to be dealt with by the International Law Commission's Special Rapporteur on relations between States and international organizations, who would undoubtedly give the matter due consideration and study the differences between conferences convened by international organizations and those convened by States. The Committee would thus ensure that the question of conferences came back to it in a form which would enable it to reach a more informed decision.

4. Mr. EL-ERIAN (United Arab Republic) thanked the Chairman for having invited him, as the International Law Commission's Special Rapporteur on relations between States and international organizations, to speak on the matter dealt with in the United Kingdom proposal. The United Kingdom was to be commended for focusing attention on the legal status, and especially on the privileges and immunities, of delegations to conferences convened by States, and their secretariats. Its proposal served the useful purpose of ensuring that the subject would not be lost sight of in the process of codifying the topics of special missions and relations between States and international organizations. The Special Rapporteur on special missions, in his first report, had raised the question of the appropriate place for dealing with the subject.[1] The International Law Commission had decided that it should not be codified as part of the topic of special missions. He himself had put the question afresh in order to ascertain where the Commission thought it should be handled. The Commission had been divided on the matter and had asked the Special Rapporteurs on special missions and on relations between States and international organizations to consult together in order to help it decide on the appropriate place for dealing with conferences not convened by international organizations.[2]

5. In his view, there were two theoretical considerations. Technically, an international conference, even when convened by a State and not by an international organization, was an aspect of multilateral diplomacy, whereas special missions, as the International Law Commission had agreed at an early stage, were a matter of bilateral diplomacy. In that connexion, article 6 of the draft Convention was worded so as to avoid the possibility of confusion between the situation it covered and the case of conferences convened by States. Secondly, a conference convened by an international organization was a conference of States, not an organ of the organization, and a conference convened by a State was also a conference of States. As the two kinds of conference were thus of the same legal nature, there was a strong case for dealing with both in the same instrument.

1 See *Yearbook of the International Law Commission, 1964*, vol. II (United Nations publication, Sales No.: 65.V.2), document A/CN.4/166, paras. 20-26.

2 For an account of the relevant discussion in the International Law Commission, see *Yearbook of the International Law Commission, 1964*, vol. I (United Nations publication, Sales No.: 65.V.1), 755th to 757th meetings.

Moreover, from a practical standpoint, it would be illogical to regulate the less frequent case of conferences convened by States before dealing with the more frequent one of conferences convened by international organizations. He also wished to stress that the question of privileges and immunities was only one of many legal aspects of conferences and it would be unwise to deal with it in isolation, as would be the case if the United Kingdom proposal was adopted.

6. Speaking as the representative of the United Arab Republic, he said that his delegation shared the view that it would be premature to act on the United Kingdom proposal and thus deprive the topic of the benefit of the customary procedure for codifying topics of international law, namely a report by a special rapporteur, consideration by the International Law Commission, and written comments by Governments.

7. Mr. ALLOTT (United Kingdom) said that his delegation had found the comments on its proposal of great interest and agreed that reflection was necessary. The United Kingdom welcomed the Chairman's suggestion for informal consultations between its delegation and those interested in its proposal and was quite ready to co-operate in that way.

8. The CHAIRMAN invited the Committee to suspend its consideration of the United Kingdom proposal to enable informal discussions to take place.

It was so decided.

Article 1 (Use of terms) (continued)
(A/C.6/L.658, A/C.6/L.765)

9. Mr. DELEAU (France), introducing his delegation's proposal (A/C.6/L.658), said that France withdrew its proposed amendments to sub-paragraphs *(e)* to *(h)* in order to simplify the Committee's work and avoid the need for a review of all the articles adopted so far. However, it remained somewhat dissatisfied with sub-paragraph *(h)*, in view of the provisions of article 9, and hoped that another delegation might be able to offer a satisfactory alternative.

10. With regard to the remainder of its proposal, it did not think that the International Law Commission had formulated sub-paragraph *(j)* in sufficiently general terms. It had therefore proposed the more abstract form of wording used in the Vienna Convention on Diplomatic Relations.

11. Mr. SHAW (Australia), introducing his delegation's amendment (A/C.6/L.765), said that, as sub-paragraph *(e)* stood, the sending State could confer representative status on a person without notifying the receiving State of the person concerned. His delegation found that undesirable. The words it had suggested had been carefully chosen to reflect the wording of the first provision of article 8 and to imply a reference to the operation of that provision, which made it clear that a sending State could not appoint a representative before notifying the receiving State of the person concerned. Seen in that light, the proposal was only a drafting amendment. In view of the wording of article 1, sub-paragraph *(a)*, the appointment of a representative of the sending State was a key feature of the system established by the draft Convention and it should therefore be made absolutely clear that such an appointment was subject to notification given to the receiving State. Australia had proposed the change in the interests of clarity and consistency.

12. Mr. MIRAS (Turkey) said that, while the appointment of State representatives in permanent diplomatic missions was governed by customary rules, which were usually codified in national legislation, and to a large extent in the Vienna Convention on Diplomatic Relations, there were few well-established rules for the designation of members of special missions. The matter had been codified only in respect of ambassadors and plenipotentiaries and, in practice, members of special missions were sometimes designated by authorities whose competence was not evident.

13. At the twenty-second session of the General Assembly, his delegation had drawn the Committee's attention (968th meeting) to the need to clarify the notion of representative status. The misgivings it had expressed had been partially satisfied by the incorporation of the requirement of consent in article 1, subparagraph *(a)*, and article 2. Since the representatives of the sending State in a special mission were the leading officials, from whom the head of the mission was chosen, it was essential that it should be expressly stipulated that they should be designated by the competent authorities of the sending State, and his delegation would therefore support the Australian amendment.

14. Mr. OGUNDERE (Nigeria) thanked the French delegation for withdrawing the greater part of its amendment to article 1. What remained was largely a question of drafting. If the French delegation had recommended the deletion of sub-paragraph *(j)*, his delegation would have had no objection, because the question of "service staff" was already dealt with in sub-paragraph *(g)*, and further definition was unnecessary. However, he had misgivings regarding the term "domestic service" in the French amendment, since it had derogatory connotations and might be interpreted as excluding such persons as governesses, whom it was undoubtedly intended to cover. The Australian amendment involved a question of drafting only, and could be referred to the Drafting Committee.

15. Mr. ALLOTT (United Kingdom) said that the Australian amendment was a definite improvement on the International Law Commission's text of sub-paragraph *(e)*, even if it was largely a question of drafting.

16. The definition of the "members of the diplomatic staff" in sub-paragraph *(h)* was not entirely satisfactory. He recalled that at the twenty-third session of the General Assembly conflicting views had been expressed concerning the meaning of the term as used in other articles of the draft Convention. Some of those views had been unacceptable to his delegation. It was not a question of identifying those members of a special mission who were career diplomats nor of identifying those members who had been given diplomatic status for the purpose of a specific special mission. He doubted whether in practice officials from ministries other than the Foreign Ministry would be accorded diplomatic status for such a purpose. In his delegation's view, the essential criterion was the type of functions performed by such persons in the special mission. The members of the diplomatic staff would be those

performing functions corresponding to those performed by the diplomatic staff of permanent diplomatic missions. He suggested that the Drafting Committee should reconsider the Commission's definition to see if it adequately conveyed the meaning intended, with a view to clarifying it along the lines he had proposed.

17. There was considerable advantage in making the wording of sub-paragraph *(j)* correspond more closely to that of the Vienna Convention on Diplomatic Relations, as proposed in the French amendment. The term "household workers" was unclear, but that was perhaps a question of translation. The Drafting Committee should re-examine the Commission's text and formulate a more accurate definition if necessary.

18. Mr. ALVAREZ TABIO (Cuba) said that the Australian amendment, far from improving the International Law Commission's text, introduced a controversial element. It was not clear who was to determine whether or not a representative of the sending State in the special mission had been "duly" designated. Since the concept of consent had been incorporated in the definition of a special mission in sub-paragraph *(a)*, the Australian text implied that it would be the receiving State that would decide that question. His delegation was therefore unable to support the amendment. It could not support the French amendment either, and would vote for the Commission's text of sub-paragraphs *(e)* and *(j)*.

19. Mr. SILVEIRA (Venezuela) said that in sub-paragraph *(c)* reference should be made to the Vienna Convention on Consular Relations, so that the language would correspond to that used in sub-paragraph *(b)*, which referred to the Vienna Convention on Diplomatic Relations. The three Conventions were interrelated, and proper definition and consistency in the use of terms were essential.

20. Mr. NJENGA (Kenya) said that before hearing the explanation given by the Australian representative he had felt that the Australian amendment involved a mere drafting change. Now, however, he felt that the amendment, especially when read in conjunction with article 8, would tend to confuse the method of appointing the members of a special mission. Their appointment differed from that of the members of a permanent diplomatic mission. In the latter case, the prior consent of the receiving State was required before the appointment could be crystallized, while in the former the appointment was a matter entirely within the discretion of the sending State. Under article 8, the sending State might freely appoint the members of the special mission, and under article 12 the receiving State was free to refuse to accept any person so appointed, without giving any explanation. A person would become a member of a special mission from the moment of his appointment by the Government of the sending State, and would cease to be a member of the mission upon being rejected by the receiving State.

21. Under the terms of the Australian amendment, if a special mission was sent out but the notification by the sending State did not reach the receiving State in time, such a special mission would be regarded as not duly designated and its status would thus be open to question. That would conflict with the principle that a special mission appointed by the sending State had the status of a special mission until rejected by the receiving State.

22. He would have welcomed the withdrawal of the whole of the French amendment, because he agreed with the Nigerian representative that the term "domestic service" used in the proposed new text of sub-paragraph *(j)* had certain specific connotations and might not cover persons who might be legitimately employed as household workers. His delegation would therefore vote in favour of the International Law Commission's text of article 1 and against the amendments of France and Australia.

23. Mr. POLLARD (Guyana) said that his delegation would support the amendments of France and Australia, which were useful clarifications of the text of article 1.

24. Mr. KOLESNIK (Union of Soviet Socialist Republics) said that, in his delegation's view, now that the Committee had adopted the definition of the term "special mission" in article 1, sub-paragraph *(a)*, further work on article 1 was to a large extent purely technical. What was required was a careful collation of the text of each of the definitions contained in article 1 with the other articles of the draft Convention and with the definitions contained in the Vienna Conventions on Diplomatic and Consular Relations. Uniformity of definitions and consistency in the use of terms was extremely important in juridical matters. The best solution would be to refer the text of article 1 as a whole, together with the French and Australian amendments, to the Drafting Committee.

25. Mr. GARCIA ORTIZ (Ecuador) said that his delegation would have no objection to supporting the Australian amendment if the word "duly" was deleted. The French amendment raised no major problems, but his delegation would prefer to give it further thought before taking any decision on it.

26. With regard to the comments by the Venezuelan representative, he felt that sub-paragraph *(c)* should be deleted entirely, because the definition contained in it was already to be found in the Vienna Convention on Consular Relations. Sub-paragraph *(b)* should be retained, because the Vienna Convention on Diplomatic Relations did not contain any definition of a "permanent diplomatic mission"

27. Mr. DELEAU (France) said that the purpose of his delegation's amendment to sub-paragraph *(j)* was to bring the text into line with the corresponding provision in the Vienna Conventions on Diplomatic and Consular Relations. The amendment did not involve any question of substance and he was therefore willing to have it referred to the Drafting Committee without a vote.

28. Mr. ROSENSTOCK (United States of America) said that his delegation agreed with the Guyanan representative that the two amendments before the Committee were useful clarifications of the International Law Commission's text. He also agreed with the representative of the Soviet Union that both were essentially drafting changes and should be referred to the Drafting Committee.

29. Mr. GASTLI (Tunisia) said that his delegation supported the French amendment to sub-paragraph *(j)* and could support the Australian amendment, subject to the deletion of the word "duly". He agreed with the Venezuelan representative that sub-paragraphs *(b)* and *(c)* should be aligned by the inclusion in sub-paragraph *(c)* of a reference to the Vienna Convention on Consular Relations. He had misgivings about the use of the word "characteristics" in sub-paragraph *(b)*, because a mission might have all the characteristics specified in the Vienna Convention on Diplomatic Relations but not perform all the functions mentioned in the non-restrictive list contained in article 3 of that Convention. The question would arise whether or not such a mission was or was not a permanent diplomatic mission. It might be simpler to state that a permanent diplomatic mission was a diplomatic mission sent by one State to another and fulfilling the conditions laid down in the Vienna Convention on Diplomatic Relations. However, if the Committee felt that the word "characteristics" was not ambiguous, his delegation would defer to the majority view.

30. Mr. SHAW (Australia) said that his delegation agreed that its amendment should be referred to the Drafting Committee.

31. Mr. SANTISO GALVEZ (Guatemala) considered that all conventions should contain precise definitions of the terms used. The draft Convention on Special Missions referred frequently to permanent diplomatic missions, and the Venezuelan delegation had rightly emphasized the need for the term to be properly defined.

32. He agreed with the representative of Tunisia in regard to uniformity in the definitions in sub-paragraphs *(b)* and *(c)*.

33. The Australian amendment certainly improved the clarity of the article, but his delegation could not support it unless the word "duly", which affected the substance, was omitted.

34. The French amendment to sub-paragraph *(j)* resulted in ambiguity in the Spanish version, and his delegation preferred the original wording.

35. Mr. ROMPANI (Uruguay) endorsed the Venezuelan representative's views and said he would vote in favour of the article as drafted by the International Law Commission. He proposed that all the amendments that had been submitted, together with two new versions of sub-paragraph *(g)* formulated by his own delegation, should be referred to the Drafting Committee.

36. Mr. DELEAU (France) said that, although his delegation felt that the changes it had proposed for sub-paragraph *(j)* improved the clarity of the article as well as its concordance with the corresponding articles in the Vienna Conventions of 1961 and 1963, he would not press his amendment.

37. Mr. ALLOTT (United Kingdom) felt that the Committee was too large a forum in which to draft precise definitions. Furthermore, it was obvious that delegations differed in their opinion as to whether their amendments affected the form or the substance of the Convention. He therefore suggested that the Committee refer to the Drafting Committee all the amendments and comments that had been submitted, without taking any decision as to whether they were of a drafting or substantive nature.

38. Mr. ALVAREZ TABIO (Cuba) said he would not oppose that suggestion.

39. The CHAIRMAN said that, if there was no objection, he would take it that the Committee approved article 1, sub-paragraphs *(b)* to *(k)*, as proposed by the International Law Commission, subject to whatever drafting changes the Drafting Committee might decide to make.

It was so decided.

Article 51 (Settlement of disputes) (A/C.6/L.766)

40. Mr. BINDSCHEDLER (Observer for Switzerland), introducing amendment (A/C.6/L.766), proposing the addition of the new article 51, said that the compulsory jurisdiction procedure proposed in the article was particularly valuable for small, weak States, which were vulnerable to pressure by larger States. It would also contribute to the maintenance of peace and the primacy of international law, enabling any party to the draft Convention to seek redress unilaterally by bringing a dispute before a judicial body.

41. The draft convention needed the new article, because rules could not be drawn up in a vacuum but needed to be applied and developed. The rules laid down in the draft Convention, being general and flexible, were bound to be open to differing interpretation. An additional argument in favour of the new article was that the Convention on Special Missions would be a technical convention which did not deal with important political matters or questions affecting national sovereignty. Any disputes that might arise would therefore lend themselves to settlement by an impartial juridical body.

42. Delegations that might be tempted to argue that the International Court of Justice was too ponderous a body to settle disputes of minor importance should bear in mind that the Court was the only universal judicial body and was at the service of the international community. Its jurisdiction in disputes arising from the draft Convention would promote the uniform application of international law and was well supported by Article 36 of the Court's Statute. Nor should it be forgotten that under Articles 26-29 of the Statute, provision was made for the Court to form chambers of as few as three judges. Such a procedure, which had not as yet been followed in practice, would make it easy for the Court to settle smaller disputes. In any event, the Statute needed to be revised in the near future.

43. Although the most important feature of the new article was that it allowed a party to bring a case before the Court unilaterally, paragraph 2 provided for arbitration and paragraph 3 for a conciliation procedure, both alternatives being subject to agreement between the parties.

44. There were numerous precedents for compulsory jurisdiction or arbitration in recent international conventions, of which he cited examples. Switzerland had always

endeavoured to establish and develop machinery for settling international disputes through arbitral or judicial procedures and had entered into bilateral treaties providing for such procedures with countries in all parts of the world. At the twenty-ninth plenary meeting of the Vienna Conference on the Law of Treaties, at its second session, a Swiss proposal identical with the one contained in the proposed new draft article had received 41 votes in favour to 36 against, with 27 abstentions.[3] There was a slow but definite trend in the direction of compulsory jurisdiction, and he urged the Committee to take a further step forward and provide for such jurisdiction in the draft Convention on Special Missions.

45. Mr. ALVAREZ TABIO (Cuba) said that, in view of the unpredictable and unsatisfactory judgements that had been given by the International Court of Justice against small States, his delegation would reject any procedure that was not a matter of free choice.

46. Mr. OGUNDERE (Nigeria) said that his delegation recognized the importance of the rule of law in international relations and therefore applauded the Swiss initiative. Nigeria had always supported the jurisdiction of the International Court of Justice and had accepted the compulsory jurisdiction of the International Court of Justice under Article 36 of its Statute, on the sole condition of reciprocity.

47. It was unfortunate, however, that the new article proposed by Switzerland contained no reference to negotiation as a means of settling disputes, because the very existence of special missions was the outcome of negotiations and because their temporary nature rendered the time-consuming procedures of the International Court of Justice unsuitable. The omission of a reference to negotiation was all the more surprising in that it headed the list of peaceful means of settling disputes set forth in Article 33, paragraph 1, of the Charter of the United Nations.

48. When a similar proposal had been submitted at the Vienna Conference on the Law of Treaties in 1968 and 1969, his delegation had produced a successful compromise formula. Believing that any disputes arising out of the present draft Convention would be better settled by means of an optional protocol, it was prepared to collaborate with other delegations in producing a satisfactory formulation. The text would enumerate all the means of settlement listed in Article 33, paragraph 1, of the Charter, with the exception of arbitration and judicial procedures, and provide that disputes which could not be settled by such means should be referred to an arbitral tribunal or to the International Court of Justice.

49. Mr. POLLARD (Guyana) said that the Swiss amendment raised a question that had been the subject of many previous discussions. He proposed that an immediate vote should be taken on the proposed new article 51.

50. The CHAIRMAN, supported by Mr. ARBELAEZ (Colombia), considered that the Swiss amendment deserved further discussion and asked the Guyanan representative not to press his proposal.

The meeting rose at 5.45 p.m.

[3] The Swiss proposal referred to was not adopted, having failed to obtain the required two-thirds majority.