



CONTENTS

	Page
Agenda item 87: Draft Convention on Special Missions ( <i>continued</i> ) . . . . .	195

**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) (A/C.6/L.745/Corr.1)*

1. Mr. ALLOTT (United Kingdom), introducing the new version (see A/C.6/L.745/Corr.1) of the article which his delegation had proposed at the twenty-third session (A/C.6/L.704) for insertion before article 48 in part III of the draft articles, said that its provisions were designed largely to meet a practical need. The question of the status of delegations of States to international conferences and of officials of the secretariat of such conferences was of considerable practical importance and, although the problem arose very frequently, it was not yet governed by a coherent set of legal rules. The United Kingdom proposal was designed to fill that gap. It was true that the matter had not been considered in sufficient detail by the International Law Commission and that, moreover, it might be asked whether it was suitable for inclusion in a draft convention on special missions or whether it would be preferable to include it in the draft articles on representatives of States to international organizations. His delegation considered that the fact that international conferences were akin to special missions was an argument for providing in the same Convention for their facilities, privileges and immunities. The argument that the matter of international conferences should be dealt with in the future convention covering the question of representatives of States to international organizations, since those conferences were generally called by the latter, should be duly taken into consideration, and his delegation was perfectly aware that it was difficult to choose between the two possibilities. It wished, however, to point out that paragraph 1 of article O imposed no obligation on States; it simply allowed them to have recourse, at their discretion, to the provisions of a precise legal instrument to settle a question which was not covered by any text. The adoption of the new article would not prejudice the outcome of the studies to be made by the International Law Commission on the subject of international conferences but might on the contrary facilitate its work, since the Commission would have at its disposal the opinions expressed by States on the present occasion.

2. Mr. BARTOS (Expert Consultant) said that, considering that the question of the status of delegations to international conferences should be settled, the International Law Commission had appointed him and Mr. El-Erian to draw up a report on the subject. The members of the Commission had distinguished two kinds of international conferences: those which were convened by an international organization and those which were convened by one or more States. It had been recognized that, in the first case, it was customary to acknowledge the competence of the international organization concerned to establish the rules governing the status of delegations to the conference which it had called and, in the second case, that such competence was vested in the State or States concerned. Furthermore, Mr. El-Erian had considered that there was no essential difference between those two categories; in his opinion, an international conference convened by one or several States constituted an *ad hoc* international organization; both categories came under the heading of relations between States and international organizations. The Commission had not had occasion to pronounce its views on the subject, since it had not had time to study the matter of international conferences in any detail.

3. In his own view, the United Kingdom proposal was in line with the relevant general principles of modern international law and came within the ambit of the rules contained in the draft Convention under consideration. It also took account of the practical difficulties arising from the lack of applicable rules in that field. If a distinction was made between large and small international conferences, it was found that the latter in particular were not generally covered by any pre-established rules; the advantage of the United Kingdom proposal was that it indicated the rules which might be applied in such cases. However, it might be asked whether general customary rules which might be applicable did not already exist, and the question of the procedure for the application of the rules proposed by the United Kingdom should also be considered. Likewise, it should not be forgotten that it might be decided to include rules relating to international conferences in the draft articles on representatives of States to international organizations, and therefore it should be made clear that the article proposed by the United Kingdom, if it was adopted, was to be considered as provisional and applicable only until such time as those draft articles were adopted. The International Law Commission had not reached any conclusion on the question whether rules governing international conferences should be included in either draft convention; however, it had affirmed that any decision on the subject should take account of the need to facilitate the task of delegations in every way possible. In his own opinion, the Sixth Committee should be guided by that consideration when examining the matter.

4. Mr. HOUBEN (Netherlands) said that, although he had at first had some misgivings about the United Kingdom proposal, he had concluded, after a more thorough study, that the words "may apply" provided States with the discretionary power which they should have in the matter. Although the International Law Commission had not yet concluded its study of relations between States and international organizations, his delegation would support the United Kingdom proposal if it was found acceptable by the majority of the members of the Sixth Committee. However, taking account of paragraph 7 of the United Kingdom's comments on the draft articles on special missions,<sup>1</sup> his delegation thought that it would be useful to add the words "outside the framework of an international organization" after the word "territory" in paragraph 1 of article O, in order better to define the scope of the article. He wished that suggestion to be submitted, if appropriate, to the Drafting Committee and he was prepared to propose an amendment in that sense if the Sixth Committee decided to take a vote on article O.

5. Mr. BINDSCHIEDLER (Observer for Switzerland) acknowledged that there was a gap in the work done so far on the codification of international law in the field under consideration, since no rules governing the status of delegations to international conferences and of the members of the secretariat of such conferences had yet been established. While the United Kingdom proposal had the merit of drawing attention to the problem, it did not seem to meet the requirements for which it was intended. A much more thorough study of the question was necessary if certain difficulties were to be avoided.

6. Paragraph 1 of article O called for four comments: first, it was unnecessary to specify that any State "may" apply the provisions in question, since it went without saying that a State which was not bound by other legal rules was at liberty to apply the rules contained in the draft Convention; secondly, that paragraph seemed to imply that such a State should indicate, by declaration, notification, or some other means, whether or not it intended to apply the Convention; thirdly, the optional character of the proposed provision might give rise to confusion, in that some States might apply the Convention, whereas others would refuse, to do so; finally, the restriction implied by the words "the provisions of part II of the present articles" hardly seemed warranted, since the problems dealt with in part I of the Convention could also arise for international conferences. It would appear preferable to have a set of standard rules from which any necessary derogations could be made by bilateral agreement.

7. The second paragraph of article O referred solely to "officials of the secretariat". That restriction, the reason for which was unclear, raised a number of problems. There were in fact three possibilities. The first was that an international organization supplied the conference secretariat officials, who should therefore have the same status as the staff of the organization. The second was that the host State supplied the conference secretariat personnel, and the fact that they would probably be nationals of that State would be bound to raise all kinds of difficulties,

particularly with regard to the application of the rules governing the granting of privileges and immunities. The third was that the States participating in the conference supplied the secretariat staff; in that case, the delegations would themselves, through some of their members, be providing the conference services and the Convention on Special Missions would thus be applicable *ipso facto*, without any need for a provision of the kind proposed by the United Kingdom, although it might perhaps be advisable to supplement the Convention, if necessary, by provisions relating to the protection of conference documents and records.

8. For all those reasons, he thought that the problem could not be settled at the present stage and that it should be referred back to the International Law Commission for more detailed consideration.

9. Mr. DELEAU (France) said that he was puzzled about the United Kingdom proposal. To be sure, the proposed article might serve a useful purpose by indicating to States that the draft Convention now under consideration might be applied in the case of a conference to which no other instrument was applicable; it might be said to supplement article 6 of the draft Convention on Special Missions. However, the proposed article, and especially its paragraph 2, which dealt with the status of officials of conference secretariats, raised various problems due, *inter alia*, to the great diversity of such conferences and hence of the secretariats serving them.

10. Since the proposed provision was not imperative in nature and could be construed as giving States a free choice, it might be included in a protocol annexed to the Convention.

11. Mr. OGUNDERE (Nigeria) observed that it frequently happened, particularly in Africa, that States held a meeting at some capital to discuss common problems. At first glance, therefore, the article proposed by the United Kingdom, which was not binding upon States but left an option open to them, seemed to be pertinent. There was, however, a risk that, if adopted, it might be applied to certain small conferences, not sponsored by any international organization, which ought to be governed by article 6 of the Convention. Since *ad hoc* arrangements were usually adopted at conferences, existing practice was relatively flexible and it would be better not to take a decision on the question raised by the United Kingdom proposal until the question of the representatives of States to international organizations had been considered. He would not, however, object to including the proposed provision in an optional protocol if the majority so desired.

12. Mr. ARBELAEZ (Colombia) said he welcomed the United Kingdom proposal, which dealt with a very important matter. There was a great similarity between special missions and delegations to an international conference. Both were temporary and representative bodies and both had specific predetermined tasks to fulfil. Moreover, the consent of the host country was required in both cases.

13. He believed that it should be possible to adopt the provisions proposed by the United Kingdom, with some modifications. They might be included in a protocol

<sup>1</sup> See *Official Records of the General Assembly, Twenty-third Session, Annexes*, agenda item 85, document A/7156.

annexed to the Convention on Special Missions. In any event, he hoped that those provisions would be adopted as transitional rules pending the drafting of definitive rules on the subject by the International Law Commission.

14. Mr. ROSENSTOCK (United States of America) considered that the article proposed by the United Kingdom was useful, because it dealt with a problem that was becoming increasingly important. The optional nature of the rule it embodied did not necessarily make it inappropriate and in fact represented a creative legal approach which was too often lacking. While his delegation would not insist upon the inclusion of the United Kingdom proposal in the Convention on Special Missions or in an optional protocol to be annexed to the Convention, he believed that it met the needs of the moment. He also found the Netherlands representative's suggestion useful. Even if the International Law Commission was to take up the problem in connexion with the draft articles on representatives of States to international organizations, the adoption of the proposed provisions would not prejudice the outcome of the Commission's work and would fill an existing gap by providing rules governing a conference held in the territory of a State which was not a participant.

15. Mr. SHAW (Australia) said he could support the United Kingdom proposal, provided that the words "unless they are nationals or permanent residents of the receiving State" in sub-paragraph (b) of paragraph 2 were also added in sub-paragraph (e). The inclusion of the proposed article in the draft Convention on Special Missions might, of course, be called premature, since the International Law Commission had not yet completed its work on relations between States and international organizations. However, to adopt the proposed article would in no way prejudice the outcome of that work and would make it easier to deal with the case of international conferences. The last clause of paragraph 1 of the proposed article contained a reservation which made the rule provisional, and if a convention on relations between States and international organizations was later adopted, the article would become inoperative, since the conference mentioned in it would in fact be governed by another international agreement. He endorsed the proposal precisely because of its provisional nature. It afforded a temporary solution, without prejudging any solutions that might be worked out later. His delegation would prefer to add the proposed article to the draft Convention on Special Missions rather than include it in an optional protocol.

16. Mr. BEESLEY (Canada) said that the comments of the Netherlands and Australian representatives had dispelled some of his delegation's earlier doubts about the new article proposed by the United Kingdom. Nevertheless, he still had reservations about the United Kingdom proposal, because its method of legislating by analogy did not always yield satisfactory results, as could be seen from the Sixth Committee's difficulties in drafting the Convention on Special Missions even though the two Vienna Conventions on Diplomatic Relations and on Consular Relations already existed. While the proposal was quite ingenious, his delegation believed that its implications in terms of each of the draft articles had not been adequately studied and would therefore reserve its position until the needed study had been completed. He would be interested in hearing the

views of the Special Rapporteur on relations between States and international organizations, Mr. El-Erian.

17. Mr. TARASOV (Union of Soviet Socialist Republics) joined other delegations in thanking the United Kingdom for drawing the Committee's attention to the important question of the holding of international conferences, which was not yet covered by contemporary international law. The United Kingdom delegation was also to be commended for its attempt to solve the problem, even if only provisionally. However, his delegation had serious doubts about the value of the proposed solution. An important argument against regarding delegations to international conferences as analogous to special missions was that the interests of the States concerned might differ, particularly where—as often happened in practice—the host State did not participate in the conference being held in its territory but merely offered its services. That divergence of interests made it *a priori* impossible, in his view, to apply the rules governing special missions automatically to delegations to international conferences. Furthermore, the problems involved in the holding of conferences were not limited to that of privileges and immunities and were, he believed, much closer to those considered by the International Law Commission in its study of relations between States and international organizations.

18. As to the actual text of the article proposed by the United Kingdom, he objected, first of all, to the use of the expression "may apply" in paragraph 1. The holding of an international conference might be compared to a treaty between the host State and the participant States; but paragraph 1, by subordinating the interests of the participant States to those of the host State, denied the participant States an opportunity to express their views on that "treaty" binding them to the host State, which was free to limit at its own discretion the privileges and immunities of the delegations representing those States. The debate on the draft articles on special missions had made clear the importance of maintaining a balance between the interests of the receiving State and the sending State; it seemed even more desirable to maintain such a balance in the case of the privileges and immunities of delegations to international conferences. He shared the view that the question should be studied more thoroughly.

19. Mr. YASSEEN (Iraq) observed, first of all, that the law concerning international conferences had not yet been codified. In formulating its proposal, which was an attempt at codifying that law, the delegation of the United Kingdom had therefore taken a commendable initiative, since the need for a body of written rules applicable to international conferences was constantly felt. However, his delegation had serious doubts about the advisability of undertaking that somewhat uncertain venture. Indeed, strictly speaking, the proposal of the United Kingdom did not constitute an amendment to the draft articles of the International Law Commission, but aimed at extending to a new, though neighbouring, field the application of the rules relating to special missions. Since, on the basis of Article 13 of the Charter, the General Assembly had established organs entrusted with the technical aspect of the progressive development and codification of international law, it seemed somewhat inadvisable for it to undertake itself that task in a specific field. As regards delegations to inter-

national conferences, it would be appropriate to adopt the attitude taken by the Vienna Conference on the Law of Treaties, which had wisely refused to study treaties between international organizations and had decided to request the General Assembly to refer the question to the competent organs.<sup>2</sup> Moreover, the timidity of the United Kingdom's approach, which was evident from the use, in paragraph 1 of the new article, of the expression "may apply", showed that the matter required more detailed study.

20. In those circumstances, it would be better if the study of the question of delegations to international conferences were left to the International Law Commission.

21. Mr. VANDERPUYE (Ghana) also thought that an extremely cautious attitude should be adopted in regard to the proposal of the United Kingdom and that the question of delegations to international conferences should be studied very carefully. His delegation was therefore in favour of the suggestion that the question should be studied by the International Law Commission. It thought, however, that the proposed article might be embodied in an optional protocol annexed to the future Convention and that it could be decided that that protocol would cease to have effect when the future convention on relations between States and international organizations came into force.

22. Mr. CAPOTORTI (Italy) pointed out that the debate had shown the considerable importance of the problem raised by the United Kingdom's proposal. He wished to call the attention of the Committee to a preliminary question that it would be very useful to clarify, namely, the actual notion of a conference. He had the impression that a distinction was made between conferences convened under

the auspices of international organizations, such as the codification conferences, whose characteristics were very specific, and special missions which had a bilateral nature and a clearly determined sphere of action. Certain articles of the draft Convention on Special Missions, such as articles 6 and 18, envisaged the possibility of meetings which could be called conferences, even if that term were not officially applied to them. The preliminary question that would have to be solved was whether or not conferences were covered by the draft Convention on Special Missions.

23. Mr. LIANG (China) commented that the efforts to make the draft articles on special missions an adaptation of the Vienna Conventions on Diplomatic and Consular Relations had produced rather unsatisfactory results; the same could be said of the proposal of the United Kingdom, which was also an attempt to adapt existing rules. Indeed, international conferences raised problems that were different from those presented by special missions; just as there were similarities between permanent diplomatic missions and special missions, there were also resemblances between special missions and delegations to conferences, but the fact remained that the two fields were different. Despite articles 6 and 18 of the draft Convention, special missions were generally bilateral, so that it was impossible to compare them to delegations to international conferences, even in the case of conferences which were not convened by international organizations. He was not in favour of the compromise solutions whereby the provisions of the proposed article would be embodied in a protocol or a provisional measure would be adopted, for they did not affect the substance of the problem. In the circumstances, he would urge the members of the Sixth Committee to act with the utmost caution.

<sup>2</sup> See A/7592, explanatory memorandum, para. 8.

*The meeting rose at 1 p.m.*