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CONTENTS

	Page
<i>Agenda item 85:</i>	
<i>Draft Convention on Special Missions (con-</i>	
<i>tinued)</i>	1
<i>Organization of the work of the Committee. . .</i>	5

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.653, A/C.6/L.656, A/C.6/
L.657)

Article 2 (Sending of special missions)

1. The CHAIRMAN invited the members of the Committee, in accordance with the decision taken at its 1039th meeting, to discuss article 2 of the draft articles on special missions.

2. Mr. SINCLAIR (United Kingdom), after paying a tribute to the Expert Consultant, Mr. Bartoš, for his important contribution to the preparation of the draft Convention, said that in his delegation's view article 2 was a fundamental provision of the draft. It established the relationship between sending and receiving States with regard to the sending and reception of a special mission. A State might send a special mission to another State, on condition that the latter consented. That, of course, assumed that the nature of special missions had already been defined, whereas in fact the discussion of that aspect had been postponed. The United Kingdom delegation would none the less like to state its attitude on the concept of a special mission. It agreed generally with the concept used by the International Law Commission in its draft articles, according to which a special mission was representative and temporary, and was sent by one State to another to discuss specific questions or to perform a specific task. Of course, in practice, the definition would encounter difficulties of application which it was to be hoped would be solved sensibly and satisfactorily by the States concerned, the consent of the receiving State being ultimately the deciding factor.

3. The main difficulty raised by article 2 was that that article, and hence the whole draft, was based on a single concept of "special mission" as if all special missions were alike. In fact, it was easy to imagine an infinite variety of such missions, in terms both of their composition and of the very varied nature of

the tasks which they would have to accomplish. While the International Law Commission had rightly drafted article 2 and the whole draft Convention on the basis of a single concept, the United Kingdom delegation nevertheless felt that a distinction should be drawn where privileges and immunities were concerned. The Vienna Conventions on Diplomatic and Consular Relations had established different régimes for permanent diplomatic missions and consular posts, and career consuls were distinguished from honorary consuls. Such distinctions were also found in conventions regulating the privileges and immunities of international organizations, between, for example, permanent delegations to an organization and those which were only temporary and between high officers of the organization and other officers of the organization. They reflected the universal desire of States to adapt privileges and immunities to the particular character of the category of persons who would benefit from them and to the functions which they were called upon to perform. The matter was one to which the greatest attention should be given in view of the fact that the granting of privileges and immunities was a serious exception to the fundamental principle of equality before the law.

4. The United Kingdom delegation considered that in the everyday practice of States a distinction was drawn and would continue to be drawn between missions led by persons of high rank and ordinary missions. It was usual, and the United Kingdom delegation had no doubt that it was in accordance with the wish of the great majority of States, for missions of the first type to receive treatment equivalent to that given to a permanent diplomatic mission, because of the special respect which should be accorded to the persons leading them and in view of the fact that their task would probably be of exceptional importance. The same was not true of the other missions because of their nature and of the specific character of the questions with which they dealt, which meant that they could not be treated in the same way as a permanent diplomatic mission.

5. The United Kingdom delegation therefore intended to submit an amendment to article 21 of the draft Convention,^{1/} the first article on privileges and immunities. It would suggest that missions led by persons of high rank should be equated, for privileges and immunities purposes, with permanent diplomatic missions, in accordance with the articles in part II of the International Law Commission's draft Convention, and that other special missions should receive for the same purposes treatment similar to that accorded to *ad hoc* delegations to specialized agencies.

^{1/} This amendment was subsequently circulated as document A/C.6/L.697.

For that purpose, it would also propose the insertion of a number of additional articles after article 47.^{2/}

6. A difficult drafting problem was admittedly involved, and his delegation was aware of the somewhat arbitrary nature of the distinction which it had made. But the Committee should find a formula which would give effect to the real desire of the majority of States. There was a widespread feeling among delegations that such a refinement of the Convention should be achieved. Otherwise, there was the risk that a convention might be adopted which many States would be unable to accept.

7. His delegation had submitted an amendment to article 2 (A/C.6/L.653). The article specified that a State was not obliged to receive special missions from another State unless it had undertaken in advance to do so. That rule was not, however, sufficiently clearly reflected in the text of article 2. It might be the case that a mission would come to the receiving State assuming that it was a special mission covered by the Convention and taking the consent of the receiving State for granted in the absence of any objection. Such an interpretation would infringe the principle of sovereignty of States whereby they must specifically consent to the sending of a special mission. Article 2 must make the rule clear, and an essential factor was that the consent of the receiving State should be expressly given. For that reason, his delegation proposed that in article 2, before the words "consent of the latter", the word "express" be added.

8. Mr. DADZIE (Ghana) said that article 2 of the draft, in its present form, was open to numerous criticisms. In the first place, it seemed unwise to speak of a "specific task", since a special mission might engage in a variety of tasks, sometimes far beyond that contemplated when it was first dispatched to the receiving State.

9. Secondly, the article as drafted gave the impression that any group of representatives of a State visiting a receiving State to perform a specific task would constitute a special mission and thus enjoy the privileges and immunities provided for under the draft Convention. His delegation found it difficult to believe that that had been the intention of the drafters.

10. Finally, with regard to the question of prior consent to the sending of the special mission, his delegation considered that the provisions of article 2 were less specific than the similar provisions in the Vienna Conventions on Diplomatic and Consular Relations. It was therefore not surprising that the representative of the United Kingdom had proposed that the word "express" be inserted before the word "consent".

11. Since there was no doubt that when the draft Convention on Special Missions came into force, the missions would enjoy extensive privileges and immunities, it would be logical and desirable for the sending State and the receiving State to know exactly what type of mission they were dealing with. The receiving State's decision might be influenced by the fact that recognition of a mission as a "special mission" would

involve the consequences specified by the draft Convention.

12. For those reasons, the Ghanaian delegation had submitted an amendment (A/C.6/L.656) to article 2. That amendment indicated clearly that to be accepted as a "special mission" by a receiving State, a mission must have been so designated and mutually agreed to previously by the sending and the receiving States; it had the advantage of following the lines of the 1961 Vienna Convention on Diplomatic Relations, and would avoid any controversy as to what should constitute express consent. His delegation was convinced that the adoption of the formulation which it proposed would serve to make the draft Convention more acceptable to a wider number of States.

13. Mrs. d'HAUSSY (France) said that article 2 of the draft immediately raised the problem of exactly what constituted a "special mission". Article 1 (a) of the International Law Commission's draft did, in fact, provide a general definition of special missions, but it would be better if it were made more specific by the indication that the duties to be carried out by special missions and the matters with which they would deal must be directly related to governmental activities. Whatever the outcome with regard to that particular point in the definition of a special mission, it must be admitted that the present situation was unlike that facing those who had negotiated the Vienna Conventions of 1961 and 1963, in that the meaning of "special mission" was not self-evident, clear and universally recognized, like, for example, that of "embassy" and "consulate". Moreover, the wide variety of special missions, their great number and the diversity of the tasks with which they could be entrusted made it difficult to characterize them. Thus, if the proposed Convention was not to become a source of conflict, rather than a means of improving relations between States, it was essential to determine clearly under what conditions it would apply.

14. Two factors of particular interest had drawn the attention of her delegation: the temporary nature of special missions and their representative character. With respect to the first point, she considered that, because of the temporary nature of special missions, it was not possible merely to extend diplomatic law to such cases; she might speak later on the conclusions which she felt should be drawn from that fact. As for the second point, which in her view was an essential one, her Government, in its comments to the Secretariat on the draft articles (see A/7156/Add.1), had indicated that the receiving State should be in a position to verify and to recognize the representative character of special missions on the basis of information provided by sending States. It was necessary for the receiving State to recognize the mission's representative character, but that would not mean that, if it was contested, the mission could under no circumstances enter that State's territory, but rather that it would then do so under the provisions of common law (in the absence of any other arrangement). Also, in order to eliminate any possibility of doubt, it would be preferable for the sending State to indicate, through the diplomatic channel, that it wished such a mission to be treated as a special mission.

^{2/} This proposal was subsequently incorporated in an amendment circulated as document A/C.6/L.698.

15. It was for those reasons that her delegation had submitted the amendment which was now before the Committee (A/C.6/L.657).

16. In conclusion, her delegation wished to emphasize that it was motivated by the same considerations as the United Kingdom representative, to whose comments it had listened with interest, but its approach to the problem was slightly different. It had also drafted an amendment to article 21,^{3/} which, after noting that heads of State on official mission enjoyed a status recognized by international law, stated the principle that ministers above a certain rank, when participating in special missions, should, like Heads of Government and Ministers for Foreign Affairs, enjoy the privileges and immunities granted to diplomatic agents by the Vienna Convention on Diplomatic Relations. But her delegation took the view that article 21 should be the only article that granted, to those benefiting from it, diplomatic status or advantages superior to those of diplomatic status. However, members of special missions other than such officials, and the missions themselves, should be covered only by a régime applicable to all special missions and established on the basis of both the needs and the temporary nature of such missions. With that end in view, her delegation would submit amendments to articles 22-40 of the draft. The solutions proposed, although they were more restrictive than those suggested by the International Law Commission, constituted none the less a development of the law.

17. Mr. OWADA (Japan) said he wished, on behalf of his delegation, to welcome the representative of Switzerland, whose participation in the work on special missions, because of his country's particular interest in the subject under consideration, would contribute greatly to the successful conclusion of the work. The subject was one concerning which no established rules or practices had emerged, save in the case of missions carried out by high-ranking officials. It covered such a variety of cases that it was necessary to keep open the possibility of adopting different provisions with respect to certain special missions in the future.

18. His delegation considered that, in the discussion of article 2 of the International Law Commission's draft, the definition of "special mission" in article 1 (a) could not be ignored. It was very important to determine to which missions the draft would apply, and it would be extremely unfortunate if that were to depend on the unilateral judgement of the sending State, which could decide to confer on certain *ad hoc* missions the character of "special missions" to which privileges and immunities should be accorded, thus leaving the receiving State no option other than to accept or refuse such missions. In his delegation's view, it was essential that not only the admission of such missions, but also the granting of the treatment prescribed under the draft Convention, should depend on the prior and express consent of the receiving State, so that the interests of the latter would be adequately safeguarded.

19. In addition, his delegation considered that the régime established under the Convention should be sufficiently flexible in application so that a differ-

ential treatment might be accorded to different types of special missions, especially with regard to privileges and immunities. It reserved the right to make more detailed remarks on the matter at an appropriate time.

20. Mr. SECARIN (Romania) noted that the International Law Commission had succeeded in making the draft articles on special missions very realistic, while introducing elements of both progressive development and codification of the law. Regarding article 2, he noted that the principle of mutual consent was presented as the foundation of the international relationship resulting from the sending and reception of a special mission, on the basis of the equal rights of States. The International Law Commission had rightly considered that there could be no obligation to receive a special mission without prior agreement. He noted that the *ad hoc* nature of special missions was taken into account in the wording of article 2. In his view, the consent of States related to both the sending and the receiving of missions, to their duties and field of activity and to the conditions under which they would function. For those reasons, his delegation was in favour of the existing wording of article 2 and would determine its position with regard to the various amendments on the basis of the same considerations.

21. Mr. ROBERTSON (Canada) said that his delegation, as it had indicated at the 1039th meeting, wished to comment on certain points concerning methods of work and procedures.

22. In the first place, with regard to the Secretariat's statement to the effect that the formulations of the two Vienna Conventions on Diplomatic and Consular Relations had been widely recognized as embodying rules of law, and that needless departures from those formulations could only create confusion (see A/C.6/L.646, para. 3), the conclusion should not be drawn that the nature of special missions was akin to the nature of permanent missions. Although it might be that in matters of terminology and definition, the formulations of those Conventions should be adopted as far as possible, departures from those Conventions, in connexion with the extent of privileges and immunities, were very necessary indeed.

23. In the second place, the decisions taken by the Committee at its 1039th meeting on the basis of paragraphs 4 and 5 of the Secretariat's note required further consideration. First, it should be determined whether or not the articles, after they had all been approved on second reading, should all be transmitted to the General Assembly together. Secondly, it might be necessary for the Secretariat, if they were approved by a majority of the Committee, to take certain practical steps in advance, since the General Assembly Hall was not as well suited to a debate on a draft convention as smaller committee rooms and since the representatives of Member States in the plenary Assembly were not necessarily as well qualified in the field as those in the Committee. Therefore, it would be useful for the Committee, with its current membership, to be constituted as the plenary body. It might be advisable, moreover, to agree tacitly within the Committee not to send those articles which had not

^{3/} Subsequently circulated as document A/C.6/L.692.

received substantial support to the plenary Assembly, where a two-thirds majority vote would be required.

24. It was not quite clear to the Canadian delegation from the English version of article 2 of the International Law Commission's draft whether the consent of the receiving State applied to the sending of a "special mission" or to the sending of any mission by another State. Or did the "consent" cover both aspects of the question? Furthermore, with regard to the exact moment at which the consent should be given and the channels to be used, his delegation suggested that, in the absence of any precision on those points in the existing wording, the article should specify, irrespective of the points referred to in the final sentence of the second paragraph of the commentary, that the sending State should seek approval in advance from the receiving State, preferably through diplomatic channels,^{4/} for the dispatch of a mission and that the attribution of the term "special mission" within the terms of the draft articles should also be decided at the time the approval of the receiving State was sought.

25. Mr. HAMBYE (Belgium) proposed that the present text of article 2 should be replaced by a new wording, which would take into account to some extent the amendments proposed by the French and United Kingdom delegations and be based on the text proposed by the representative of Ghana. The proposed text would read as follows:

"The sending and receiving by States of missions recognized as special missions shall be done by express mutual consent. This agreement may involve departure from the provisions of articles 21 to 47."

26. The second sentence of that text was intended to emphasize the supplementary nature of articles 21 to 47 and the importance of agreement between the States.

27. Mr. DE ULYSSÉA (Brazil) did not agree with the representative of Ghana concerning the expression "specific task" in article 2 of the draft. That expression might equally be applied to a combination of several tasks or to one single task. What mattered was that the tasks should be specified.

28. On the other hand, the Brazilian delegation supported the amendment proposed by the United Kingdom (A/C.6/L.653). If it was stated that the consent must be "express", the granting of certain privileges would be facilitated.

29. Mr. VEROSTA (Austria) pointed out that article 2 of the draft only mentioned the carrying out of a specific task, whereas the "special mission", according to the definition in article 1, could be sent to deal with a State on specific questions or to perform in relation to that State a specific task. Since the "field of activity" referred to in article 3 obviously covered both possibilities, it might be preferable to bring that article into line with the other two articles.

30. Mr. RATTANSEY (United Republic of Tanzania) considered the Ghanaian amendment too broad and thought it preferable to maintain the wording of the

International Law Commission's draft which stipulated that the mission should have "a specific task". The United Kingdom amendment (A/C.6/L.653) was preferable. His delegation reserved the right to make another statement after all the amendments, including that of the Canadian delegation, which appeared to introduce a new element, had been submitted in writing.

31. Mr. BAYONA ORTIZ (Colombia) did not consider it necessary to establish any particular connexion between articles 2 and 3 since, from its title, the latter should refer only to the task to be carried out by the mission. Article 2, on the other hand, was concerned only with the sending of special missions and it was to that idea that the Ghanaian amendment (A/C.6/L.656) referred. His delegation was ready to support it, without prejudice to any changes which might subsequently be made.

32. Mr. BARTOS (Expert Consultant) pointed out that the task of the special mission referred to in article 2 should not be confused with its field of activity, which was the subject of article 3. It could only be said that the definition of the field of activity tended to restrict the task initially assigned to the special mission and that the two questions were interdependent; however, the discrepancy between articles 2 and 3 mentioned by some delegations was only superficial, because the expressions "specific task" and "field of activity" referred to two completely different ideas.

33. As for the Ghanaian amendment (A/C.6/L.656), the International Law Commission had taken its inspiration, when drafting article 2, from the basic idea of article 2 of the Vienna Convention on Diplomatic Relations, but only within certain limits. The appropriate inferences should be drawn from the differences between special missions and permanent diplomatic missions; the procedure applied to special missions, which was based on *ad hoc* diplomatic practice, covered two phases: a first phase of negotiations on the principle of the mission itself and a second, the object of which was to determine the mission's field of activity. The first phase obviously did not apply to diplomatic missions, which were institutions whose tasks were laid down once and for all by diplomatic law. That was why special missions and permanent diplomatic missions had to be regarded from different viewpoints.

34. Finally, according to the idea expressed in the French amendment (A/C.6/L.657), although the receiving State was free to refuse a diplomat from another country admission to its territory, it was not entitled to fix the category under which a foreign diplomat was to be classified. Similarly, it was not the rank of the persons composing the special mission which gave them the right to benefit from the privileges and immunities but their status as members of the special mission. The extent of those privileges depended on the extent to which the mission's task entitled its members to protection. The nature of the special mission's task therefore should be the determining factor.

35. In conclusion, he would say that his chief concern was not so much to defend the draft articles as to preserve their unity.

^{4/} An amendment to this effect was subsequently circulated as document A/C.6/L.661.

36. Mr. KIBRET (Ethiopia) said his delegation considered that article 2 was a particularly important provision, the purpose of which was to make the sending of special missions subject to the consent of the receiving State, contrary to former practice whereby the powerful States obliged weak States to receive special missions; thus, the text of article 2 helped to reaffirm the principle of the sovereign equality of States. His delegation did, however, accept the possibility of tacit consent.

37. He observed that the amendment submitted by the Ghanaian delegation (A/C.6/L.656) introduced a new element in stipulating that the special mission should be designated as such; while agreeing that such a wording would help to solve any problems of definition which might arise, his delegation feared that it might lead to excessively divergent practices. It therefore preferred the text adopted by the Commission. However, it wished to suggest that the expression "for the performance of a specific task" should be deleted, as it appeared to be redundant in view of the fact that article 1 (a) contained other elements. Finally, his delegation raised no objection to the United Kingdom amendment (A/C.6/L.653), but, with the proviso already stated, it would prefer the Commission's text to be retained, as it had the merit of sufficient flexibility.

38. Mr. CASTRÉN (Finland) said that his delegation could accept the substance of the present text of article 2. Unlike those who wished the consent of the receiving State to be expressly stated or even made the subject of a special agreement, his delegation, like the Expert Consultant and the Commission itself, was of the opinion that sufficient flexibility should be left in the text, in view of the great diversity of special missions. Moreover, there was no risk entailed in accepting the draft of article 2, since the receiving State remained at liberty to withhold its consent and could also make it subject to conditions of its own choice; the sending State could then submit counter-proposals with a view to reaching an agreement whereby the States concerned could grant the special mission a specific status by extending or restricting the privileges and immunities normally granted. For those reasons, his delegation was unable to accept the amendments submitted by France (A/C.6/L.657) and the United Kingdom (A/C.6/L.653).

39. With regard to the form of article 2, he believed that some improvements could be made in it; first, in view of the difference between the definition of the expression "special mission" in article 1 (a) and the wording of article 2, it might be advisable to delete the phrase "for the performance of a specific task" in article 2. Secondly, bearing that amendment in mind, his delegation suggested that article 2 should

be worded as follows: "The sending of a special mission presupposes the consent of the receiving State". He wished to point out that his suggestion did not constitute a formal amendment.

40. Finally, he felt that the amendment submitted by the Belgian delegation (A/C.6/L.659) was already at least partially covered by article 50 of the Commission's draft.

41. Mr. YASSEEN (Iraq) said he found the present text of article 2 satisfactory, since it was a very accurate reflection of current practice. Bearing that concern for accuracy in mind, he found it difficult to accept the Ghanaian amendment (A/C.6/L.656), which was based on a misconception in that it required mutual consent, whereas many factors were dependent only upon the will of the sending State.

42. With regard to the United Kingdom amendment (A/C.6/L.653), he appreciated the concern for clarity which prompted it, but feared that the requirement of express consent might impede the development of international relations. He felt that consent could be tacit, as certain special missions did not require the formality of express consent. The wording of the French amendment (A/C.6/L.657) could be criticized on the grounds that it gave a State the authority to settle questions to which perfectly equitable solutions could be found in international law; it was essential to stress that the question whether a special mission was representative in character should not be subjected to examination by the receiving State.

43. On the question whether it was well-advised to use the expression "for the performance of a specific task", a distinction should be drawn between article 1 and the other draft articles; the object of that article was simply to clarify the application of the Convention; consequently, in the remainder of the draft, which constituted its operative part, it would be advisable to leave the expressions which specified the role of special missions. Finally, he, like the Expert Consultant, wished to point out that the word "task" was not synonymous with "field of activity", and that the purposes of articles 2 and 3 were thus entirely different.

Organization of the work of the Committee

44. The CHAIRMAN suggested that the deadline for the submission of amendments to articles 3 to 5 be 6 p.m. on Wednesday, 16 October 1968, and, for the submission of amendments to articles 6 to 10, 6 p.m. on Thursday, 17 October 1968.

It was so decided.

The meeting rose at 1.15 p.m.

