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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 42 (Settlement of civil claims) (continued)
(A/C.6/L.764 and Add.1 and 2)

1. The CHAIRMAN announced the beginning of the voting: the Committee had before it an amendment (A/C.6/L.764 and Add.1 and 2) jointly sponsored by Bolivia, Brazil, India, Iraq, Trinidad and Tobago, and Tunisia, and an oral amendment submitted by the United States. The Hungarian delegation had proposed that the former should be put to the vote before the United States oral amendment, and he invited the Committee to vote on that proposal.

The Hungarian proposal regarding the order of voting was adopted by 44 votes to 27, with 17 abstentions.

2. The CHAIRMAN said that consequently the Committee would vote on the joint amendment. He gave the floor to the Australian representative, to explain his vote on the amendment.

3. Mr. Krishna RAO (India), speaking on a point of order, after the representative of Australia had begun his explanation of vote, said that, since the Chairman had announced the beginning of voting, there could be no interruption of the voting for the purpose of explanations of vote.

4. The CHAIRMAN ruled that all explanations of vote were to be given after the voting.

5. Mr. ROSENSTOCK (United States of America) appealed against the Chairman's ruling. He found the procedure being followed extremely confusing. The wording of the joint amendment tended to confuse two separate questions—the deletion of article 42 and the submission to the General Assembly of a draft resolution to replace that article—and hence his delegation, which had also requested the right to speak in explanation of vote, would like to explain its vote at the current stage of the proceedings and not after the voting. He maintained that the delegation of

Australia and any other delegation requesting the right to speak in explanation of vote before the vote could properly be accorded the right to speak at that time, and that it should be accorded that right.

The Chairman's ruling was upheld by 61 votes to 11, with 19 abstentions.

At the request of the Australian representative, the vote on the joint amendment was taken by roll-call.

Honduras, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Hungary, India, Indonesia, Iran, Iraq, Jamaica, Kuwait, Libya, Mali, Mauritania, Mongolia, Morocco, Nepal, Nicaragua, Niger, Nigeria, Pakistan, Poland, Romania, Saudi Arabia, Senegal, Sierra Leone, Southern Yemen, Sudan, Syria, Togo, Trinidad and Tobago, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Venezuela, Yemen, Yugoslavia, Zambia, Afghanistan, Algeria, Argentina, Bolivia, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cameroon, Central African Republic, Ceylon, Czechoslovakia, Dahomey, Ethiopia, Guatemala, Guyana.

Against: Iceland, Ireland, Israel, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Panama, Philippines, Portugal, South Africa, Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Australia, Belgium, Canada, Costa Rica, Denmark, Ecuador, Finland, France, Greece.

Abstaining: Ivory Coast, Kenya, Lebanon, Liberia, Madagascar, Mexico, Peru, Spain, Thailand, Turkey, Uganda, Barbados, Chad, Chile, China, Colombia, Cuba, Cyprus, Ghana.

The joint amendment (A/C.6/L.764 and Add.1 and 2), as orally modified, was approved by 52 votes to 26, with 19 abstentions.

6. Mr. SHAW (Australia) said that he had voted against the amendment, not because his delegation was opposed to the rule stated in the draft resolution included in the amendment, but because of its preference for keeping the rule in the form of an article of the draft Convention. His delegation regretted that the Committee had decided to delete article 42 and particularly that delegations which favoured maintaining the article had been obliged to vote against the amendment because of the procedure followed. His delegation regretted that the Committee had not observed the hitherto uniform practice in the Committee of permitting explanations of vote before the vote was taken.

7. Mr. FRANCIS (Jamaica) said that he had voted in favour of the joint amendment because he believed that the waiver of immunity from jurisdiction should be left to the discretion of the sending States, which he was sure would observe the principle of good faith.

8. He regretted that some delegations had opposed proposals by the representatives of Lebanon and Kenya at the 1136th meeting to delete article 42, since in his opinion the amendment dealt with two separate matters on which separate votes by the Committee might have been preferable. For that reason, his delegation had abstained in the vote on the Hungarian proposal regarding the order of voting.

9. Mr. ROSENSTOCK (United States of America) said he had voted against the amendment for reasons similar to those expressed by the Australian representative. His delegation had also thought it would be better to retain article 42 in the draft Convention, and it regretted that the Committee had rejected the motion submitted at the 1136th meeting by the Kenyan representative to the effect that a separate vote should be taken on the opening words of the amendment. With regard to the point of order raised by the Indian representative, it was hard to see why delegations should not be permitted, under rule 129 of the rules of procedure of the General Assembly, to explain their votes before the voting, especially when the decision to be taken affected so delicate a problem as that under discussion in the Committee and one on which there was so much confusion. He cautioned that denying a State the right to speak when the rules of procedure expressly permitted the delegation to speak was an unwise and dangerous precedent.

10. Mr. ENGO (Cameroon) explained that his delegation had fully supported the Chairman's ruling concerning explanations of vote, because at an earlier meeting an appeal on the question of procedure had been made to delegations wishing to explain their votes and because at the current meeting the voting on the amendment had already begun, so that the Chairman had very properly refused the request by a delegation that it be permitted to explain its vote.

11. His delegation had voted in favour of the joint amendment because, although it was not opposed to the substance of article 42, it held that the article was out of place in a draft convention, if only because its provisions were not sufficiently normative in character.

12. Mr. OWADA (Japan) expressed the view that the incorporation of article 42 in the draft Convention on Special Missions would have been much better than the method followed by the United Nations Conference on Diplomatic Intercourse and Immunities, which had adopted a resolution as an annex to the Convention drawn up by it. In view of the temporary nature of special missions, it might have been useful to express the obligation which was the subject of article 42 even more clearly than in the case of permanent diplomatic missions. Moreover, it was unfortunate that the draft resolution incorporated in the amendment had one paragraph fewer than the text of the resolution annexed to the Vienna Convention. In view of the fact that the difference between article 42 as drafted by

the International Law Commission and the draft resolution included in the amendment was a matter not of substance but of conception, his delegation might have voted in favour of the amendment if it had been given the opportunity beforehand to express its preference for retaining article 42.

13. Mr. CHAMMAS (Lebanon) pointed out that rule 129 of the rules of procedure of the General Assembly gave the Chairman the right to permit members to explain their votes, either before or after the voting, but that after the beginning of voting, no representative might interrupt it.

14. His delegation had voted against the Hungarian motion because it, too, had hoped to be able to explain its position concerning the retention or deletion of article 42 before the amendment was put to the vote. His delegation would have preferred to retain the article, since it failed to understand why the lack of a similar normative rule in the Vienna Convention on Diplomatic Relations should constitute an argument for deleting the article in question.

15. He regretted that the voting had reflected disagreement within the Committee and said that members should not lose sight of the need to adopt a text so framed as to secure as wide a measure of support as possible.

16. Mr. DELEAU (France) said that his delegation had found itself obliged to vote against the joint amendment because of the procedure which had been followed. As it had indicated, it had been in favour of retaining article 42 in the Convention. However, if the decision to delete article 42 had been taken by the Sixth Committee, his delegation would have been able to accept the draft resolution recommended in the joint amendment, in spite of its shortcomings.

17. Mr. CHAILA (Zambia) said he had voted in favour of the joint amendment on the grounds that article 42 was not sufficiently normative in character to justify its inclusion in a legal instrument.

18. Miss DAHLERUP (Denmark) explained that she had voted against the joint amendment because the procedure adopted had prevented her from expressing her view with regard to the retention or deletion of article 42, which actually her delegation supported.

19. Mr. USTOR (Hungary) said that his delegation had voted in favour of the joint amendment for the reasons he had given at the 1136th meeting.

20. Mr. ESPEJO (Philippines) was convinced that the principle embodied in article 42 contained important elements affecting rules with which States should comply. He felt that article 42 should have been retained in the draft Convention and had therefore voted against the joint amendment.

21. Mr. GASTLI (Tunisia) said that he was a sponsor of the joint amendment, but he would nevertheless like to explain why he had voted in favour of it. Article 42 of the International Law Commission's draft did not seem practicable, since the provisions embodied therein were more in the nature of a recommendation and had no mandatory

force; and his delegation still felt that codification should give rules of law, as accepted by the majority, a chance of survival.

22. He referred to the statement made that morning in the General Assembly by the Director-General of the International Labour Organisation (1793rd plenary meeting) and to the fact that that Organisation had to date drawn up 130 conventions and adopted more than 150 recommendations, and said that if a rule did not command general agreement and, consequently, could not be integrated into the main body of a convention, it should be turned into a recommendation. He therefore felt that article 42 of the draft Convention submitted by the International Law Commission should be replaced by a draft resolution.

23. Mr. SILVEIRA (Venezuela) said he had decided to vote in favour of the joint amendment after hearing the explanation given by the Expert Consultant and the arguments put forward by the representative of Iraq. He felt, moreover, that article 41, relating to the waiver of immunity, contained adequate provisions with regard to the settlement of civil claims.

24. Mr. ROMPANI (Uruguay) said he could have voted in favour of the joint amendment if he had felt that the draft resolution it contained was an improvement on the text of article 42; however, that was not the case. It was, for example, regrettable that the word "*acciones*", which was used in the Spanish text of article 42, had been replaced by the word "*reclamaciones*". Furthermore, not only did the draft resolution exclude penal claims, as did article 42, but it referred only to the claims of individuals, thus excluding proceedings instituted, for example, by public authorities. For all those reasons, he had voted against the joint amendment.

25. Mr. DADZIE (Ghana) said he had been unable to vote in favour of the draft resolution recommended in the joint amendment because it did not alter the legal situation with regard to the waiver of immunity. There was nothing wrong with the wording of article 42, as submitted by the International Law Commission, and it was unfortunate that what was to have been a rule of the Convention had been turned into a draft resolution. The sponsors had intended to improve the text of article 42, but he disagreed with the method they had used, and consequently had abstained in the vote on the joint amendment.

26. Mr. SOFIANOPOULOS (Greece) said he had voted against the joint amendment because he preferred the text of article 42 as submitted by the International Law Commission.

Article 44 (Duration of privileges and immunities)
(A/C.6/L.717, A/C.6/L.761)

27. The CHAIRMAN noted that the Committee had before it two amendments to article 44, one submitted by France (A/C.6/L.717) and the other by Belgium (A/C.6/L.761).

28. Mr. DELEAU (France) said that his delegation had decided to withdraw its amendment, in view of the adoption of a definition of the term "special mission".

29. Mr. VRANKEN (Belgium) said that he wished to submit amendment A/C.6/L.761 relating to article 44 and amendment A/C.6/L.688 relating to article 45 at the same time, since his delegation was proposing that article 44, paragraph 3, should be deleted only in order that its contents might be transferred to article 45 (Property of a member of the special mission or of a member of his family in the event of death). The proposal was one of form, not substance; it would be more desirable for all provisions relating to death to be covered in a single article, namely article 45. The Committee might leave it to the Drafting Committee to consider the matter.

30. Mr. VEROSTA (Austria) agreed with the representative of Belgium that all provisions relating to death should be contained in a single article. He also agreed that the Belgian amendment should be referred to the Drafting Committee. If the latter accepted the proposal, the title of article 45 would also have to be changed.

31. Mr. SANTISO GALVEZ (Guatemala) agreed that the Belgian amendment was of a purely formal nature, but felt that paragraph 3 should remain in article 44, since it concerned the duration of privileges and immunities, whereas article 45 related to the treatment of the property of a member of a special mission or of a member of his family in the event of death.

32. Mr. SOFIANOPOLOUS (Greece) emphasized that article 44, paragraph 3, defined the rights of the members of the family in the event of the death of a member of a special mission, whereas article 45, paragraph 1, related to the treatment of his property in that event. The two provisions were therefore quite unrelated to one another. However, he did not object to the question being referred to the Drafting Committee.

33. Mr. DADZIE (Ghana) said that article 44, paragraph 3, related to a substantive matter and that article 44 and article 45 dealt with entirely different subjects. He did not think that the Belgian amendment should be referred to the Drafting Committee.

34. Mr. BARTOS (Expert Consultant) was of the opinion that the Belgian amendment, whose purpose was to combine all provisions relating to death in a single article, involved a matter of substance, not merely one of form. The International Law Commission's idea had been to include all provisions relating to the duration of privileges and immunities in one article and all those concerning the treatment of the property of a member of the special mission, or of a member of his family in the event of death, in another article. He could therefore not agree that article 44, paragraph 3, should be transferred to article 45.

35. Mr. ROMPANI (Uruguay) said that his delegation would have liked to add a sentence to the beginning of article 44, paragraph 3, to read as follows:

"The duration of the privileges and immunities of the members of the family of a member of the special mission shall cover the entire period during which the member of the special mission from whom their privileged status is derived enjoys protection."

That sentence would have filled a gap in the draft articles. However, since the time-limit for the submission of amendments to article 44 had expired, he would merely draw the attention of members of the Committee to the idea he had wished to express. Article 44, like article 45, might create serious difficulties as a result of the adoption of article 43, which required the transit State to be acquainted with the domestic legislation of all States in order to apply the Convention, since if the receiving State had not ratified the proposed Convention or had ratified it but took advantage of article 50, the transit State would have to apply the rules of the receiving State. That problem, which had arisen in connexion with article 43, was even more acute with regard to articles 44 and 45.

36. Mr. VRANKEN (Belgium) reiterated that the purpose of the Belgian amendment was merely to simplify the presentation of the draft articles. It was incorrect to say that article 45 did not refer to the duration of privileges and immunities of the members of the special missions. He wished to make a new proposal which would be closer to the procedure adopted in the Vienna Convention on Diplomatic Relations, namely to combine articles 44 and 45 in a single article on the duration of privileges and immunities.

37. Mr. BARTOS (Expert Consultant) recalled that the International Law Commission had unanimously decided to divide the provisions taken from article 39 of the Vienna Convention into two articles: one on the duration of privileges and immunities, and the other on the property of a member of the special mission or of a member of his family in the event of death. As was stated in the commentary on article 45, the Commission had taken that decision for the sake of clarity, because it considered that article 39 of the Vienna Convention dealt with two quite different points.

38. Mr. POTOLOT (Central African Republic) agreed with the Expert Consultant; unless privileges and immunities were to be considered as property, it would not be right to combine articles 44 and 45.

39. Mr. CAPOTORTI (Italy) said that the procedure chosen by the International Law Commission and the one advocated by the representative of Belgium were equally acceptable and logical. It was merely a question of drafting on which protracted debate would be fruitless. As for the idea formulated by the representative of Uruguay, he thought that it was not altogether necessary to make that idea more explicit, since it was already implied in the text of the draft articles.

40. Mr. GASTLI (Tunisia) said that the Belgian proposal concerned only the drafting of the articles. Yet articles 44 and 45 did indeed deal with different points, though the idea of the eventuality of death was common to both. If the Belgian proposal was accepted it would be necessary to change both the text and the heading of article 45 which would then relate to the legal consequences of the death of members of special missions. His delegation considered that the International Law Commission had been right to divide the provisions taken from article 39 of the Vienna

Convention into two articles, for by so doing it had made the matter clearer. It was not essential to refer the question to the Drafting Committee, since to do so would further burden that Committee. His delegation supported the present arrangement of the articles.

41. Mr. FRANCIS (Jamaica) said that the representative of Belgium had formulated two proposals. The first aimed at combining articles 44 and 45 in a single article and clearly concerned only the form of the draft articles; the Sixth Committee could instruct the Drafting Committee to decide whether there was good reason to change the present arrangement of the articles. As for the other Belgian proposal—that paragraph 3 should be transferred from article 44 to article 45—it also dealt with the form of the draft, though it might not appear to do so.

42. Mr. SANTISO GALVEZ (Guatemala) explained that he had meant to say that it would not be technically sound to deal with different points in a single article. He had considered only the form of the draft articles. In short, his delegation, which supported the views expressed by the Expert Consultant, thought that article 44 should be left as drafted by the International Law Commission.

43. Mr. ENGO (Cameroon) said that the Belgian proposal seemed to him to be an attempt to introduce a new article into the draft Convention. He agreed with the Expert Consultant that articles 44 and 45 clearly dealt with two totally different points. The arrangement adopted by the International Law Commission seemed the most logical and satisfying. As there was no compelling reason to change the present arrangement, the Cameroon delegation was against the proposed changes. Nor was it particularly in favour of referring the matter to the Drafting Committee, since the Sixth Committee could itself take a decision. He asked the representative of Belgium not to insist that his amendment should be put to the vote.

44. Mr. VALLARTA (Mexico), supported by Mr. DELEAU (France), proposed that when the discussion on article 45 was concluded, the Sixth Committee should, without taking a vote, refer articles 44 and 45, together with the relevant amendments submitted by Belgium, to the Drafting Committee. In that way, the Sixth Committee would save time, as there would be no explanations of vote. Furthermore, the task of the Drafting Committee would be facilitated by the discussion held in the Sixth Committee, in which delegations not represented on the Drafting Committee would be able to express their viewpoints.

45. After a procedural discussion, in which Mr. SANTISO GALVEZ (Guatemala), Mr. DADZIE (Ghana), Mr. ROBERTSON (Canada), Mr. CHAILA (Zambia), Mr. CAPOTORTI (Italy), Mr. FRANCIS (Jamaica) and Mr. POTOLOT (Central African Republic) took part, the CHAIRMAN announced that if there were no objections he would consider that the Sixth Committee had accepted the proposal of the representative of Mexico.

It was so decided.

The meeting rose at 6.10 p.m.