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Chairman: Mr. Gonzalo ALCÍVAR (Ecuador).

Tribute to the memory of Dato' Mohamed Ismail bin Mohamed Yusof, Permanent Representative of Malaysia to the United Nations, and Mr. Akili B. C. Danieli, Permanent Representative of the United Republic of Tanzania to the United Nations

On the proposal of the Chairman, the members of the Committee observed a minute's silence in tribute to the memory of Dato' Mohamed Ismail bin Mohamed Yusof and Mr. Akili B. C. Danieli.

1. Mr. AL-ALBAN (Kuwait), speaking on behalf of the Arab delegations and the Yugoslav delegation, Mr. NJENGA (Kenya), speaking on behalf of the African delegations, Mr. DARWIN (United Kingdom), speaking on behalf of the group of Western European and other countries, Mr. SECARIN (Romania), speaking on behalf of the socialist delegations, Mr. VALLARTA (Mexico), speaking on behalf of the Latin American delegations, Mr. TEJA (India), speaking on behalf of the Asian delegations, and Mr. MUNG'OMBA (Zambia) paid tributes to the memory of Dato' Mohamed Ismail bin Mohamed Yusof, Permanent Representative of Malaysia to the United Nations, and Mr. Akili B. C. Danieli, Permanent Representative of the United Republic of Tanzania to the United Nations, and asked the Malaysian and Tanzanian delegations to convey their condolences to the Malaysian and Tanzanian Governments and peoples.

2. Mr. GOH (Malaysia) thanked the members of the Committee for their expressions of sympathy, and said he would convey them to the Malaysian Government and people.

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 50 (Non-discrimination) (*continued*) (A/C.6/L.767)

3. Mr. CAPOTORTI (Italy), introducing the new text of article 50 contained in document A/C.6/L.767, which was

the outcome of the consultations held after the preceding meeting of the Committee, said that the compromise text would substitute a new paragraph 2 (*b*) for paragraphs 2 (*b*) and (*c*) of the Commission's text. Paragraphs 1 and 2 (*a*) would remain unchanged. The new paragraph 2 (*b*) spoke of modifying, rather than increasing or reducing, the extent of facilities, privileges and immunities accorded to special missions.

4. The proviso contained in the second part of the new paragraph (*b*) would bring the article into line with the provisions of article 41 of the Vienna Convention on the Law of Treaties.

5. In the drafting of the new text, it had been felt unnecessary to state expressly that modifications could be made in specific cases only, as had been suggested at the 1139th meeting, because that was already implicit in the text.

6. Mr. VRANKEN (Belgium) said that his delegation had been prepared to vote in favour of article 50 as drafted by the Commission. That text established a detailed and balanced framework for *ad hoc* diplomacy and reflected a practice widespread among Governments experienced in the exchange of special missions. The right of States to increase or reduce the extent of facilities, privileges and immunities accorded to special missions was based on the principle of State sovereignty and his delegation would have been unable to accept the draft Convention as a whole if paragraph 2 (*c*) of the Commission's text had been deleted.

7. Accordingly, his delegation welcomed the compromise text introduced by the Italian representative, especially since it took account of the relevant provision of the recent Vienna Convention on the Law of Treaties, and would support it.

8. Mr. YASSEEN (Iraq) recalled that at the 1139th meeting he had stressed the desirability of bringing article 50 into line with article 41 of the Vienna Convention on the Law of Treaties. He did not understand why it was necessary to make express provision for the possibility of reducing the extent of facilities, privileges and immunities, especially since no corresponding provision was contained in the Vienna Conventions on Diplomatic and Consular Relations.

9. Nevertheless, his delegation found the new compromise text acceptable in substance, but, while it was clear that under the new paragraph 2 (*b*) States would have the right to increase or reduce the extent of facilities, privileges and immunities, it might be wise to add, after the words "special missions", the words "with a view to either increasing or reducing them", in order to remove any possibility of misinterpretation. His delegation would be

able to support the new text with that amendment. Since it would not affect the substance of the article, he suggested that it should be referred to the Drafting Committee.

10. Mr. OGUNDERE (Nigeria) thanked the delegations which had participated in the preparation of the new compromise text, although he still preferred the original text of article 50 as submitted by the International Law Commission. He pointed out that all the provisions of the draft Convention constituted *jus dispositivum*, so that all States were free to derogate from any of them where, in doing so, they would not be violating the provisions of any treaty to which they were parties.

11. The extensive debate on article 50 had stemmed from the fear on the part of certain Governments that the flexibility of the article might be used to their disadvantage. Obviously, mere guarantees of good faith would not suffice to allay those fears. The text introduced by the Italian representative represented a useful contribution, in that it utilized the terms of article 41 of the Vienna Convention on the Law of Treaties, which would be applicable in any case, and because it succeeded in combining the provisions of sub-paragraphs (b) and (c) of paragraph 2 of the original article 50 in a way in which many delegations would find acceptable. However, like the representative of Iraq, he felt that the fundamental provisions of those sub-paragraphs should be spelled out in greater detail; otherwise the deletion of the words "more favourable treatment", which appeared in sub-paragraph (b) in the original text, might lead future interpreters of the Convention to believe that the article referred only to the reduction of facilities, privileges and immunities. If the Iraqi suggestion was adopted, his delegation would be satisfied with the text now proposed.

12. Mr. BEESLEY (Canada) said that the question of non-discrimination was indeed a difficult one, but the problems involved might be more apparent than real, particularly in view of the suggestion made by the representative of Iraq. He supported the proposal introduced by the Italian representative, because, while there was no doubt that the draft Convention should permit a certain amount of latitude in order to take account of the special relationships which existed between States, it was equally necessary to lay down specific, binding obligations as part of a comprehensive treaty, rather than in what would amount to a series of optional protocols. His delegation found the Iraqi suggestion interesting and fully compatible with the modified text. If that suggestion was adopted, the provisions of the text introduced by the Italian representative would ensure the necessary latitude, but would rule out modifications which might be incompatible with the object and purpose of the draft Convention.

13. Mr. ROMPANI (Uruguay) said that his delegation had been prepared to vote for article 50 as submitted by the International Law Commission, whose text should be modified as little as possible. Moreover, it considered that article 50, like article 1, sub-paragraph (a), was a key provision which would have an important effect in determining the scope of the draft Convention. Numerous objections had been raised against article 50, although his delegation considered that many Governments would be

reluctant to ratify the Convention without that article. The main problem was that the article set out to prohibit discrimination and then went on to provide that certain measures, which might be viewed by some as discriminatory, would be permitted so long as they were applied on a reciprocal basis. In his delegation's view, sub-paragraph (c), of paragraph 2 was not essentially different from sub-paragraphs (a) and (b). At the most, it was superfluous, since it was within the power of States to agree between themselves on such restrictions, whether in respect of special missions or of any other aspect of international relations. Thus, like draft article 42, which had finally been replaced by a draft resolution, article 50 began by stating the absolute principle of non-discrimination and then proceeded to enumerate exceptions to that principle, the reason being that, in the current state of international relations, it was inevitable that discrimination should exist in precisely the forms set forth in article 50, paragraph 2.

14. It had been argued that agreements limiting the extent of facilities, privileges and immunities could produce effects only as between the parties thereto. That principle was incontrovertible in public international law, as in private law. Such agreements were *res inter alios acta*. But the principle would apply to sub-paragraph (c) no less than to sub-paragraphs (a) and (b).

15. In his opinion, the provisions which were likely to result in the greatest conflicts were those contained in article 43, particularly paragraph 3, which obliged third States to accord "the same inviolability and protection as the receiving State is bound to accord". Similar provisions appeared in article 40 of the Vienna Convention on Diplomatic Relations and article 54 of the Vienna Convention on Consular Relations. One of the effects of the article was to oblige the third State, under certain circumstances, to apply provisions different from those which governed its own international relations. That difficulty would be further aggravated by the application of any of the measures referred to in article 50, paragraph 2. The application of the two articles in question could lead to what might well be viewed as discriminatory treatment in respect of a third State. Conventions were written not only for legal experts but also for laymen, including parliamentarians whose task it was to ratify them. Provisions such as those of article 50 were likely to make parliaments think twice when the time came to ratify the Convention.

16. Turning to the compromise text introduced by the Italian delegation, he said that the most important part of it was the second half of sub-paragraph (b) of paragraph 2, beginning with the word "provided". Although its provisions were consistent with international legal practice, he feared that they might hamper the adoption and ratification of the Convention.

17. He suggested that the expression "the present articles" in sub-paragraph (b) should be replaced by "the present Convention". The suggestion made by the representative of Iraq was incompatible with the Spanish version of the compromise text, where the word "*limitación*" should be replaced by "*modificación*".

18. If the compromise text was not adopted, his delegation would vote for the original text of article 50 as drafted by the International Law Commission.

19. Mr. DADZIE (Ghana) said that some of the fears his delegation had expressed about sub-paragraph (c) of paragraph 2 of article 50 were allayed by the compromise text introduced by the Italian delegation. With regard to the addition suggested by the Iraqi representative, the term "modify" was wide enough to cover both increases and reductions in facilities, privileges and immunities, and it was therefore unnecessary to amplify it. In addition, it was undesirable to refer expressly to the possibility of reduction. His delegation therefore preferred the compromise text as it stood.

20. Mr. GARCIA ORTIZ (Ecuador) agreed with the Uruguayan representative that in the Spanish version of the compromise text the word "*limitación*" should be replaced by the word "*modificación*". His delegation found article 50 as drafted by the International Law Commission acceptable; hence it was all the more willing to vote in favour of the compromise text.

21. Mr. ALVAREZ TABIO (Cuba) agreed that the replacement of the word "*limitación*" by the word "*modificación*" would improve the Spanish version of the compromise text. The text as a whole would also benefit from the addition proposed by Iraq.

22. Mr. ENGO (Cameroon) said that his delegation had objected to paragraph 2 (c) of article 50 as drafted by the International Law Commission, because it seemed liable to be abused. It had also opposed it on the ground that it was unnecessary to provide so expressly for the possibility of contracting out of a system of residuary rules. Cameroon regarded the proposed new text as an acceptable compromise. It did not see the desirability of the addition proposed by Iraq, which, by introducing the notion of reduction, would revive its fears about paragraph 2 (c) of the International Law Commission's draft. The proviso about non-incompatibility with the object and purpose of the draft articles was reassuring, but it needed consideration.

23. Mr. CHAILA (Zambia) said that the future Convention had to be flexible; some countries might be unable to afford to grant all the privileges and immunities provided for in the draft Convention, and at the same time all countries should be free to accord more favourable treatment if they wished. His delegation could accept any wording which ensured that flexibility. Both the International Law Commission's draft and the new compromise text did so and were identical in substance. His delegation could therefore agree to either of them, but it would support the latter text because it represented a compromise. Zambia did not favour the change proposed by Iraq, which it considered unnecessary.

24. Mr. GASTLI (Tunisia) said that the proposed compromise text met his delegation's wishes with regard to article 50, except for one point. The use of the words "the extent of facilities, privileges and immunities for their special missions" admitted the possibility of derogation from the provisions of part II of the draft Convention only. Although that part contained the most important provisions, it might be preferable to provide for the possibility of derogation from any provision of the future Convention,

in which case the words to which he had referred should be replaced by the words "one or more provisions of the present Convention".

25. Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) said that his delegation would support the text introduced by the Italian representative, which it regarded as a successful compromise. It could not accept the change proposed by Iraq, because it would add redundant wording. In addition, it would destroy the essentially compromise nature of the text, because it was precisely the use of the word "reduce" in paragraph 2 (c) of the International Law Commission's draft which had caused difficulties. The Uruguayan proposal to replace the words "the present articles" by "the present Convention" was acceptable; as a purely drafting change, it could be left to the Drafting Committee. His delegation would vote in favour of the compromise text as it stood.

26. Mr. YASSEEN (Iraq) said that he had proposed a mere drafting change. Its purpose was to stress the realities of the situation envisaged in paragraph 2 (b) of the compromise text: that the modification could be either augmentative or restrictive. It was perfectly clear that the word "modify" covered both ideas and it was undeniable that States were entitled to derogate from multilateral treaties, as provided for in article 41 of the Vienna Convention on the Law of Treaties. Nevertheless, because paragraph 2 (b) of the compromise text replaced two sub-paragraphs providing respectively for more favourable and less favourable treatment, it would be preferable to spell out the full significance of the word "modify". He would withdraw his proposal only if the Committee expressed the definite view that the word implied both possibilities.

27. Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) moved the closure of the debate on article 50.

28. Mr. SOFIANOPOULOS (Greece) opposed the closure motion on the ground that the proposed compromise text had not been adequately discussed. The proviso of non-incompatibility, for example, introduced an entirely new element into the draft article.

29. Mr. SANTISO GALVEZ (Guatemala) opposed the closure motion because of the need for further discussion of the Iraqi proposal.

30. Mr. DARWIN (United Kingdom) pointed out that document A/C.6/L.767 had not been before the Committee for twenty-four hours. He therefore asked the Chairman whether, in the event of the Committee's adopting the Ukrainian motion, he intended to put article 50 to the vote before adjourning the meeting.

31. The CHAIRMAN replied that he would not ask the Committee to vote on draft article 50 until the following day's meeting. He invited the Committee to vote on the Ukrainian motion.

The Ukrainian motion was rejected by 29 votes to 27, with 31 abstentions.

The meeting rose at 6.20 p.m.