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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 and  
Corr.1, A/C.6/L.747, A/C.6/L.751/Add.4, A/C.6/L.773)**

*Article 1 (Use of terms) (continued) (A/C.6/L.751/Add.4)*

1. Mr. YASSEEN (Iraq), Chairman of the Drafting Committee, introducing the texts it had adopted for sub-paragraphs (b) to (k) of article 1, said that in sub-paragraph (b) the representative of Tunisia had suggested either the addition of the words "and the functions" after the word "characteristics" or the replacement of the words "and having the characteristics specified in the Vienna Convention on Diplomatic Relations" by the words "and fulfilling the conditions specified in the Vienna Convention on Diplomatic Relations"

2. The Drafting Committee had pointed out that the Vienna Convention on Diplomatic Relations did not define the conditions that had to be fulfilled by diplomatic missions. Article 3 of that Convention was merely a non-exhaustive list of some of the functions performed by such missions. The Drafting Committee had therefore not been able to adopt the Tunisian suggestion. For the same reasons, it had replaced the words "having the characteristics specified in the Vienna Convention on Diplomatic Relations" in the International Law Commission's text of sub-paragraph (b) by the words "within the meaning of the Vienna Convention on Diplomatic Relations"

3. The Drafting Committee had made no amendment to sub-paragraph (c). It had not accepted a suggestion made by the representative of Ecuador that the sub-paragraph should be deleted as reproducing a definition already embodied in article 1 of the Vienna Convention on Consular Relations. After all, a definition contained in one convention was not binding on the parties to another convention. Nor had the Drafting Committee adopted a suggestion by the Venezuelan representative that sub-paragraph (c) should be brought into line with sub-paragraph (b) by the addition of a reference to the Vienna Convention on Consular Relations. It had recalled that consular relations were the subject not

only of that multilateral Convention, but also of numerous bilateral conventions, and it had therefore deemed it preferable to make no reference to any of those instruments.

4. The Drafting Committee had made no amendment to sub-paragraphs (d) to (g), but with regard to sub-paragraph (d) it had considered a suggestion by the representative of New Zealand that the word "person" in the International Law Commission's text should be replaced by the phrase "representative of the sending State in the special mission". It was true that according to article 9 only a representative of the sending State in the special mission could be appointed head of the mission. However, the Drafting Committee had felt that there was no point in including such a phrase in an article dealing with definitions which could not, of itself, provide a summary of definitions to cover the entire contents of a convention.

5. The Drafting Committee had not accepted the Australian amendment to sub-paragraph (e) (A/C.6/L.765), on the grounds that certain high-ranking dignitaries such as the Head of State, the Head of Government and the Minister for Foreign Affairs represented their State in a special mission *ex officio* without being specially appointed.

6. The Drafting Committee had added to the text of sub-paragraph (h) as submitted by the International Law Commission the words "for the purposes of the special mission", because what mattered was not the functions normally performed by a person but those he performed in the special mission. Someone who was not a career diplomat could be a member of the diplomatic staff of a special mission. Conversely, it was possible that a career diplomat might be a representative of the sending State or, in the case of a high-level mission, merely a member of the administrative and technical staff.

7. The Drafting Committee had made no change in sub-paragraphs (i), (j) and (k). France had submitted an amendment to sub-paragraph (j), but had not pressed for a decision on its proposal.

8. The Drafting Committee had considered a suggestion by the representative of Uruguay that a new sub-paragraph be added dealing with the phrase "members of the administrative staff", but had noted that the Vienna Convention on Diplomatic Relations and the provisions already adopted for the draft Convention on Special Missions used the phrase "members of the administrative and technical staff", making no distinction between the position of the administrative staff and that of the technical staff. The Drafting Committee had therefore considered it preferable not to have a separate definition for administrative staff.

9. The CHAIRMAN said that, if there was no objection, he would take it that the Committee adopted the text of sub-paragraphs (b) to (k) of article 1 as adopted by the Drafting Committee.

*It was so decided.*

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

10. Mr. ALLOTT (United Kingdom) read out a passage which his delegation wished to see included in the Committee's report. He said that in informal consultations there had been no objection to the inclusion of the passage, and if it were accepted, his delegation would not press for the inclusion of the new article O it had proposed.

*The Sixth Committee decided to include the passage read out by the representative of the United Kingdom in its report.<sup>1</sup>*

*Final clauses*

11. Mr. YASSEEN (Iraq), Chairman of the Drafting Committee, outlined the decisions taken by that Committee, as set forth in its report on the final clauses (A/C.6/L.773).

12. In the absence of agreement on some of the provisions of the final clauses, such as those concerning participation in the Convention, the Drafting Committee had decided to transmit to the Sixth Committee the three drafts that had been submitted.

13. Mr. BINDSCHIEDLER (Observer for Switzerland) noted that all three drafts followed the stock formula of signature, ratification, and accession. He recalled that the League of Nations had become aware that that formula had resulted in inadequate ratification of conventions by States, and had worked out an arrangement whereby ratification and signature by States were replaced by the signature of the President and Secretary of the international organization under whose auspices the convention had been drawn up. Accession was thus left to the decision of States. That procedure had enabled many more conventions to enter into force, and he cited several post-war examples. He pointed to the practical advantages of such a simplified procedure and advocated its adoption for the draft Convention on Special Missions.

14. Mr. ALLOTT (United Kingdom), introducing the draft submitted by France, the United Kingdom and the United States (A/C.6/L.773, annex, draft II), said that apart from minor changes it was identical with the corresponding clauses of the Vienna Conventions on Diplomatic and Consular Relations and on the Law of Treaties, and he hoped the Sixth Committee would pay heed to the powerful arguments for following those precedents.

15. The drafts submitted by the Soviet Union (*ibid.*, draft I) and by Ghana and India (*ibid.*, draft III) raised the vexed problem of participation. There was a danger that the Committee might regard it as mere technicality, or as a moral issue. The three-Power draft had the advantage of

being realistic. It had to be recognized that there was disagreement in the world on the interpretation of the concept of a State, and the formula chosen should reflect that situation. By adding to the first three categories of States to which the Convention would be open for signature a fourth category consisting of any other State invited by the General Assembly to become a party to the Convention, the three-Power draft solved the problem in the most appropriate way. The result was not a closed or discriminatory formula, because there was no State that could not be covered by the wording.

16. He urged the Committee not to risk nullifying the work on the draft Convention by departing, for politically-inspired reasons, from the precedents created by the three Vienna Conventions.

17. Mr. Krishna RAO (India) said that the accession provisions were of great importance as far as the usefulness of the future Convention to the international community was concerned. International conventions enabled States to establish relations with each other along specific lines and acted as a means of bringing world public opinion to bear on States' activities. All States should therefore be permitted to accede to them. The question of the extent of the right of accession was the main issue underlying the three proposals before the Committee. The three-Power proposal, the well-known "Vienna formula", would restrict participation to the States specified. In practice, however, participation would be restricted even further, because the provision concerning invitations to other States by the United Nations General Assembly had been included in other conventions but had never been implemented; it was in fact a dead letter, and to re-enact it would be unrealistic and hypocritical. Since the instrument before the Committee was technical and not political in nature, there was no justification for excluding any State from participating in it. Nor did the United Nations Charter contain anything to support the view reflected in article A of the three-Power proposal. The Vienna formula, by denying certain States the right to multilateral treaty relations with other States, was illogical and unjust.

18. The defects of the Vienna formula were overcome by the Soviet Union proposal, the equally familiar "Moscow formula". But though the latter permitted universal participation, it had the defect of stipulating more than one depositary, which made it difficult to ascertain the exact status of a convention at any given moment. The system whereby the Secretary-General of the United Nations was designated as the sole depositary was far preferable, because it enabled the information to be obtained immediately, and to abandon it would therefore be detrimental to the general interest.

19. To overcome what they considered to be the faults of both the Vienna and the Moscow formulas, Ghana and India were proposing the "new" Vienna formula, which had first been introduced at the United Nations Conference on the Law of Treaties. Their article A left the old Vienna formula untouched but added something from the Moscow formula. The combination was an improvement on the old Vienna formula, because it enabled all States to participate in the future Convention; in addition, it overcame the difficulties raised by the cumbersome depositary stipula-

<sup>1</sup> See A/7799, para. 178.

tions of the Moscow formula, since it provided for a modified form of the United Nations depositary system with the Secretary-General as the final depositary. The Governments of the Soviet Union and the United States of America had been suggested as the initial depositaries because they were the depositaries of those multilateral conventions which contained the Moscow formula.

20. The time had come to accept the consequences of the parallel existence of the Vienna and Moscow formulas. A majority of States were not entitled to claim that a minority should be excluded from multilateral treaty relationships. The new formula, while not harming the majority, would protect the minority. It acknowledged the fact that certain entities were entitled to become parties to important multilateral conventions but it did not raise any question of the recognition of States, since accession to an international convention by a State which was not recognized as such by certain other States had no effect on the recognition of that State in international law, as many multilateral treaties proved.

21. He had been surprised to hear the United Kingdom representative say that the old Vienna formula was realistic. Yet the Western Powers had accepted an "all States" formula in instruments such as the Treaty banning nuclear weapon tests,<sup>2</sup> the Outer Space Treaty<sup>3</sup> and the Treaty on the Non-Proliferation of Nuclear Weapons.<sup>4</sup> He disagreed that the acceptance of an "all States" formula would jeopardize the whole structure of the future Convention and raise political difficulties. His opinion was that it would be bad politics not to continue along the lines laid down in the Treaty banning nuclear weapon tests and the Outer Space Treaty. They had set a good example which should be followed in the present case.

22. Mr. BERNAL (Panama) said that the three-Power draft was a clear and logical expression of the realities of the Charter and the present policies of States. The answer to the Indian objection was that States not parties to the Convention on Special Missions could achieve the same purpose by means of bilateral conventions.

23. Mr. ADJIBADE (Dahomey) said his delegation considered that the final clauses of the future Convention should either repeat those of the Vienna Conventions or be as closely modelled on them as possible. The clauses had secured general acceptance on previous occasions and it was therefore unnecessary for the Committee to discuss them again at length. With regard to depositaries, Dahomey favoured the designation of the Secretary-General of the United Nations as the sole depositary of the future Convention.

24. Mr. ALLOTT (United Kingdom), replying to the comment by the Indian representative that the Western Powers had accepted an "all States" formula for certain

other conventions, said that some Governments had agreed to an apparently broader participation formula in certain treaties because of their character and the circumstances surrounding them. The instrument before the Committee would be the third in a series, the first two being the Vienna Conventions on Diplomatic and Consular Relations. It would therefore be sensible to repeat the established formula for that series. The factors which had applied in the cases of the other treaties he had mentioned were irrelevant in the case of the present draft Convention.

25. Mr. KOLESNIK (Union of Soviet Socialist Republics) said that, since the Committee was notoriously divided on the question of the extent of participation in the future Convention, and since the same issue was raised by the Declaration on Universal Participation in the Vienna Convention on the Law of Treaties (see A/7592, explanatory memorandum, para. 5), which was to be considered under agenda item 94, the Committee might save time by confining its present discussion of the final clauses to those aspects on which the Drafting Committee had reached agreement and postponing consideration of the participation provisions until it had dealt with the Declaration. He therefore suggested that the Committee proceed accordingly.

26. Mr. ROSENSTOCK (United States of America) said that the Soviet Union suggestion raised a substantive issue. His delegation could not agree to any procedure which might prevent the Committee from completing its work on the draft Convention at the twenty-fourth session. If the Soviet Union had wished the procedure it had outlined to be adopted, it should have proposed it earlier in the session.

27. The CHAIRMAN said he was anxious that the Committee should not become involved in a procedural discussion. He therefore suggested that it should suspend its consideration of the final clauses and that informal discussions should take place immediately with a view to a consensus being reached on the question of participation in the future Convention.

28. Mr. ROSENSTOCK (United States of America) said that his delegation welcomed the Chairman's suggestion but would agree to it only on the understanding that if the informal discussions had not achieved their purpose by the time fixed for the next meeting, the Committee would immediately resume its consideration of the final clauses.

29. The CHAIRMAN said he greatly hoped that a consensus would be forthcoming before the Committee met again.

30. Mr. KOLESNIK (Union of Soviet Socialist Republics) said that his delegation found the Chairman's suggestion acceptable. However, if the proposed consultations were unsuccessful, it would resubmit its suggestion at the following meeting in the form of a motion to adjourn the discussion of the controversial portions of the final clauses until the Committee had considered the Declaration on Universal Participation in the Vienna Convention on the Law of Treaties.

31. Mr. DELEAU (France) said that his delegation welcomed the Chairman's suggestion; it would oppose a motion of the kind referred to by the Soviet representative.

<sup>2</sup> Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water, signed in Moscow on 5 August 1963 (United Nations, *Treaty Series*, vol. 480 (1963), No. 6964).

<sup>3</sup> Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (see General Assembly resolution 2222 (XXI), annex).

<sup>4</sup> See General Assembly resolution 2373 (XXII), annex.

32. The CHAIRMAN invited the Committee to adopt the procedure he had suggested.

*It was so agreed.*

*Organization of the work of the Committee*

33. The CHAIRMAN said that agenda item 105 entitled "Forcible diversion of civil aircraft in flight" had been allocated to the Sixth Committee after it had established its programme of work. In view of the urgency attaching to that item, the Committee might wish to embark on a preliminary consideration of it immediately after it had disposed of item 87, at which stage draft resolution A/C.6/L.771 would be introduced. The Committee would then take up items 94, 89 and 88, thus resuming the order of work laid down in its programme, and follow item 88 with the formal debate on item 105. He thought such a

two-stage procedure would help the Committee to reach an early decision on the subject.

34. Mr. KOLESNIK (Union of Soviet Socialist Republics) said that his delegation could agree to item 105 being considered immediately after item 88, but it did not think that the introduction of the draft resolution should be separated from the debate on the subject. He would therefore be unable to agree to the procedure the Chairman had outlined.

35. Mr. ENGO (Cameroon) moved the adjournment of the meeting.

*The motion to adjourn the meeting was adopted by 73 votes to none, with 14 abstentions.*

*The meeting rose at 5.20 p.m.*