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Chairman: Mr. Gonzalo ALCÍVAR (Ecuador).

AGENDA ITEM 87

**Draft Convention on Special Missions (*continued*) (A/5709/
Rev.1 and Corr.1, A/7375; A/C.6/L.747, A/C.6/L.773)**

Final clauses (continued)

1. Mr. KOLESNIK (Union of Soviet Socialist Republics), introducing the draft final clauses submitted by his delegation (A/C.6/L.773, annex, draft I), said that, for some of the final clauses, the Drafting Committee had managed to find an acceptable solution by following the Vienna Convention on Diplomatic Relations. On the other hand, it had not been possible to reach agreement in the Drafting Committee on the provision concerning participation in the future Convention. Hence the Drafting Committee's report contained three sets of draft final clauses: the draft submitted by France, the United Kingdom and the United States (*ibid.*, draft II), which used the formula in the Vienna Convention on Diplomatic Relations, and the drafts submitted by the Soviet Union and by Ghana and India (*ibid.*, draft III), both of which proposed wider participation.

2. His delegation did not adopt a rigid stand towards the clauses in paragraphs 2 to 6 of its draft. The Soviet draft was based essentially on the principle of the universal participation of States in international conventions; it thus followed the formula used in the text of the draft treaty on the prohibition of the emplacement of nuclear weapons and other weapons of mass destruction on the sea-bed and the ocean floor and in the subsoil thereof, which the representatives of the Soviet Union and the United States had submitted to the Conference of the Committee on Disarmament on 7 October 1969¹ and for which they would probably perform depositary functions. While nobody disputed the principle of universality, it had to be admitted that there were countries in the United Nations which

respected that principle in word but not in deed. Many of the earliest multilateral treaties of the modern era, such as the instrument establishing the Universal Postal Union, had been open for signature by all States; however, the cold war had later produced a discriminatory formula, which had been used in the Vienna Convention on Diplomatic Relations and had been a retrograde step compared with earlier international law. More recently, that trend had been reversed, and important instruments had been prepared in which the principle of universality had been established; examples were the Treaty on the Non-Proliferation of Nuclear Weapons (see article IX, para. 1), the Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water, and the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies.

3. Another argument in support of the draft final clauses submitted by the Soviet Union delegation was to be found in the latest report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States (A/7619), in which the principle of equal rights and self-determination of peoples was reaffirmed. In addition, in its Declaration on Universal Participation in the Vienna Convention on the Law of Treaties, the United Nations Conference on the Law of Treaties had stated its conviction that multilateral treaties which dealt with the codification and progressive development of international law, or the object and purpose of which were of interest to the international community as a whole, should be open to universal participation (see A/7592, explanatory memorandum, para. 5). The draft Convention on Special Missions fell within that category.

4. He hoped that the members of the Committee would show their devotion to the principles of international law by giving their support to the draft final clauses submitted by his delegation.

5. Mr. COLEMAN (United States of America) thought that the future Convention on Special Missions should have the same accession clause as the Vienna Conventions on Diplomatic and Consular Relations of 1961 and 1963. Some delegations had maintained that the formula proposed by France, the United Kingdom and the United States was designed to prevent certain States from becoming parties to the Convention. But the formula enabled the United Nations General Assembly to invite any State that wished to do so to become a party to the instrument; it was curious that no suggestion had yet been made to take advantage of that possibility. A technical convention such as the Convention on Special Missions was not the appropriate vehicle for the solution of major political problems, which were rather the responsibility of the

¹ A revised version of the draft treaty was submitted to the Conference by the same Powers on 30 October 1969. For an account of the discussion in the Committee on Disarmament in this connexion, and also the texts of both versions of the draft treaty, see the report of the Conference of the Committee on Disarmament dated 3 November 1969 (A/7741), paragraphs 46-53.

Security Council or of the political committees of the Assembly.

6. The USSR draft provided for a multi-depositary system which would deprive the Secretary-General of his role as depositary of codification conventions concluded under the auspices of the United Nations. The United States delegation considered that such a departure would be justified only in exceptional cases. There were very few instances in which a multiple depositary system had been adopted and they were treaties on such questions as disarmament or the use of outer space, which involved the survival of mankind and were of such overriding importance and urgency that no legal or political positions, however deep-rooted, could be allowed to stand in the way. The Convention on Special Missions, on the other hand, was technical in nature, like the Vienna Conventions on Diplomatic and Consular Relations and on the Law of Treaties, and would contribute to the codification and progressive development of international law. The Soviet formula was therefore not suitable for use in the present instance.

7. The draft submitted by Ghana and India raised still more complex problems. In that connexion, his delegation wished to emphasize once again that treaties banning nuclear weapon tests or governing the exploration and use of outer space should not be used as models for deciding what States could be parties to the future Convention on Special Missions. The peace-loving qualities of a State were relevant only to its admission to membership of the United Nations; the fact that it was a party to the treaties he had mentioned did not *ipso facto* entitle it to be party to a convention on special missions. In addition, the formula proposed by India and Ghana had little to do with the principle of universality, since the most it could do would be to enhance the status of one régime which many States did not recognize. Moreover, the purpose of a convention on special missions could surely not be to solve, in a roundabout manner, basic political questions concerning Europe. His delegation therefore thought that the proposal of India and Ghana should also be rejected.

8. Mr. OGUNDERE (Nigeria) said that his country had always supported the principle of the universal participation of States in multilateral instruments. The 1961 Vienna Convention on Diplomatic Relations had first used the formula embodied in the draft final clauses submitted by France, the United Kingdom and the United States. Since the conclusion of that Convention, however, the attitude of the international community had changed considerably, following the emergence of a number of new States in Asia and Africa. In addition, the great Powers themselves had agreed that the formula in the 1961 Convention was outmoded, as could be seen from numerous international instruments concluded between 1963 and 1968, such as the Treaty banning nuclear weapon tests. To settle the question of participation in those instruments, which were of vital importance to mankind, the great Powers had found a formula which had been and continued to be acceptable. Still more recently, the formula in the 1961 Convention had been put to a very severe test at the United Nations Conference on the Law of Treaties; it had finally been judged inadequate and, although the Conference had decided to use it in the Vienna Convention on the Law of Treaties, it had adopted a Declaration to the effect

that the General Assembly should apply the principle of universality in that connexion. The Nigerian delegation had studied the various sets of draft final clauses for the Convention on Special Missions submitted to the Committee in the light of that principle and in a desire to progress beyond the formula in the 1961 Convention.

9. The Soviet Union draft was not without merit but it was not entirely satisfactory, particularly with regard to the depositary procedure envisaged therein. The draft submitted by France, the United Kingdom and the United States also offered certain advantages but had the disadvantage of being purely and simply a restatement of the formula in the 1961 Convention. The Nigerian delegation preferred the draft submitted by Ghana and India, which respected tradition by using the formula from the 1961 Convention, but added, in paragraph 1 (b) of article A, a new element consistent with the principle of universality. However, it was prepared to accept any solution which would be an improvement on the formula in the 1961 Vienna Convention.

10. Mr. USTOR (Hungary) supported the draft final clauses as submitted by the USSR, which in his view adhered most closely to the principle of universality, a corollary of the principle of sovereign equality of States and a basic constituent of contemporary international law. Although the moral or legal nature of the principle of universality was still the subject of lively discussion, it was nevertheless certain that the principle could not be dissociated from the process of codification and progressive development of international law, because the health and progress of mankind could not be assured without the establishment of a political or legal order on a world-wide scale. Respect for the rule of law by all States was an essential condition for international peace and security. To exclude certain States from the process of formulation of rules of law or, more precisely, to prevent them from becoming parties to treaties involving the codification and progressive development of international law would be against the interest of all mankind.

11. A State did of course have the right to select the States with which it was willing to enter into contractual relations; on the other hand, it could not, without contravening the principle of universality and impeding the progressive development of international law, exercise that right in such a way as to prevent certain members of the international community from becoming parties to a general multilateral treaty. In that respect he noted with satisfaction that the Declaration on Universal Participation in the Vienna Convention on the Law of Treaties confirmed the principle of universality, so that the principal problem remaining was the implementation of the principle.

12. Some delegations held that the USSR draft would ruin the chances of success of the future Convention on Special Missions. As the Indian representative had rightly observed, it was difficult to understand how a formula which could be accepted by the great Powers in respect of four treaties of undeniable importance could in the present circumstances prove so catastrophic. It had also been said that as there had not been universal agreement in respect of the notion of what was a State, the practical application of the "all States" formula would present difficulties. His delega-

tion thought, however, that it was specious to contest a principle by invoking the difficulties to which its application might give rise. Finally, the argument that it was appropriate in the circumstances to follow the precedents laid down by the Vienna Conventions on Diplomatic and Consular Relations had no really logical basis and, moreover, took no account of the fact that the formula adopted for those Conventions violated the principle of universality. To reject that principle in connexion with the codification and progressive development of international law would actually amount to a rejection of other basic principles of the United Nations Charter, such as the duty of States to co-operate with one another, to practise tolerance and live together in peace with one another as good neighbours.

13. For all those reasons, his delegation, while appreciating the efforts of Ghana and India, would support the formula proposed by the Union of Soviet Socialist Republics.

14. Mr. SPACIL (Czechoslovakia) observed that the question of universal participation in conventions or treaties concluded under the auspices of the United Nations had never been so acute as at the present session, both in the Sixth Committee and in the other Main Committees of the General Assembly. The question was of considerable practical importance, since the widest possible application of international legal instruments was hampered by the systematic opposition of certain States to the principle of universality. His delegation considered that among the three drafts of final clauses before the Sixth Committee, while the proposal of Ghana and India constituted a compromise solution reflecting a sincere effort and as such deserved full credit, the formula of the Union of Soviet Socialist Republics had the advantage of being wider and thus more effective.

15. Some delegations had argued, in support of the draft submitted by France, the United Kingdom and the United States, that it kept close to the formula adopted in the Vienna Conventions of 1961 and 1963. It was difficult to see, however, why it should be necessary in the circumstances to follow precedents which, in the view of his delegation, took no account of the evolution of international relations and changes in the attitude of certain States which had taken place since those Conventions had been drawn up. Moreover, the precedents cited were chosen somewhat arbitrarily, since others could be quoted for which a different solution had been adopted.

16. In any event, even if the principle of universality was not approved in connexion with the adoption of the Convention on Special Missions, it was bound to be established before long on the international scene as a principle of positive law. His delegation could only hope that the Sixth Committee would seize the opportunity it was given to ensure the triumph of that principle by adopting the formula proposed by the Union of Soviet Socialist Republics.

17. Mr. ALVAREZ TABIO (Cuba) said that once again the Committee had to face the problem of participation in instruments relating to the codification and progressive development of international law and that once again the "Vienna formula" was being used to impede the full

application of the principle of universality. The aim of the Vienna formula was, in fact, to deprive a number of socialist States of the opportunity of participating in conventions of a multilateral character; to propose that formula was to deny historical reality, the elements on which the juridical existence of those States was based, and to enter into flagrant contradiction with the Declaration unanimously adopted by the United Nations Conference on the Law of Treaties.

18. Furthermore, the supporters of the Vienna formula set the principle of sovereign will against the principle of universality; the former principle was, admittedly, at the basis of contractual relations but it should cease to apply once norms of a general and objective character, whose aim was to express the generally accepted rules of international law, were involved. The fundamental principle of international law, namely, the mutual recognition of the sovereign equality of States, forbade Members of the United Nations to create imaginary categories of States for the purposes of participation in multilateral conventions concluded under the auspices of the United Nations, inasmuch as to do so was contrary to both the letter and the spirit of the Charter. It was not with formulas such as that of the 1961 Convention that the progressive development of international law would be promoted.

19. Lastly, he pointed out that Article 2, paragraph 6, of the Charter imposed certain obligations on States which were not Members of the United Nations; when such obligations were set down in treaties, it was normal that they should be counterbalanced by certain rights, including the right to participate in such treaties. To deny the People's Republic of China, the Democratic People's Republic of Korea, the Democratic Republic of Viet-Nam or the German Democratic Republic the right to participate in such conventions as that relating to special missions was quite simply tantamount to sacrificing the force of reason and history to the force of numbers. The Cuban delegation would therefore vote against the Vienna formula and in favour of the USSR proposal, which embodied the principle of universality.

20. Mr. SAHOVIĆ (Yugoslavia) said that, since he would have an opportunity to state his views on the substance of the problem of the participation of States in international conventions during the debate on agenda item 94 concerning the Declaration and resolutions adopted by the United Nations Conference on the Law of Treaties, he would merely state his delegation's position with regard to the proposals contained in the annex to document A/C.6/L.773. He would vote in favour of those proposals which gave any State an opportunity to become a party to the future Convention on Special Missions, for two reasons. First, he was convinced that the participation of all States in conventions relating to the codification and progressive development of international law was in keeping with the fundamental rule of contemporary international law which authorized all States to participate in the creation and application of universal international conventions. Secondly, in view of the specific nature of the subject with which it dealt, the Convention on Special Missions lent itself perfectly to the participation of all States. What was more, the practical necessity of settling questions between States by means of special missions made it desirable to

find a solution under which all States would be invited to become parties to that Convention.

21. Mr. YASSEEN (Iraq) said that one of the aims of the codification of international law was to make international law uniform. That could only be done, however, on the basis of universality. To deny the principle of universality would be to encourage the creation and evolution of several systems of international law, which was incompatible with the existence of a single world and with the aim of the codification and progressive development of international law. The Committee should not continue to allow itself to be influenced by political considerations, which had, moreover, under the pressure of the harsh realities of international life, led to a paradox: it was recognized that certain States had a role to play with regard to the measures to be taken to ensure the survival of mankind, but not with regard to the establishment of a harmonious legal order.

22. The Iraqi delegation was in favour of the principle of universality. In the interests of the international community as a whole, all States should be able to participate in treaties and in the work of codification. It was for that reason that he would vote in favour of the draft final clauses submitted by the USSR. If that draft was not adopted, he would vote in favour of the draft submitted jointly by Ghana and India.

23. Mr. Krishna RAO (India) said that, in connexion with the future Convention on Special Missions, mention had been made of political considerations which had led States to accept a formula for universal participation for certain instruments such as the Treaty on the Non-Proliferation of Nuclear Weapons, the Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water or the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies. He wondered what difference there was between treaties relating to outer space and those relating to the earth and what political considerations could apply to the former and not to the future Convention on Special Missions. Universal participation in treaties was not a moral question and it could not be solved by hypocritically taking refuge behind precedents. It was the policy of alignment and not the policy of non-alignment which was opposed to the solution of the problem raised by universal participation in conventions concluded under the auspices of the United Nations. Some had said that the problem would solve itself with time. Others had accused the supporters of the principle of universality of dealing in slogans. He did not see the relevance of those arguments. Considerations of expediency had also been invoked. Such considerations could not prevent each delegation from submitting its own proposals, as it was allowed to do under the rules of procedure. It was incorrect to say that only one system would benefit from the adoption of the draft submitted by Ghana and India, since it would enable all those countries which, under the draft submitted by France, the United Kingdom and the United States, were prevented from participating in the future Convention on Special Missions to become parties to that instrument.

24. To those who had said that the formula proposed by Ghana and India ran counter to the objectives sought, he

pointed out that that was only true if the rules of alignment were taken as a basis and if all the rules of the United Nations were disregarded.

25. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) said that it was because special missions were increasing in number and posing more and more problems that it had been found necessary to draw up a convention dealing with them. The draft Convention under consideration proclaimed the principles applicable to bilateral and multilateral relations between States. The States referred to in the draft final clauses submitted by France, the United Kingdom and the United States were not the only ones concerned with special missions; there were other States, not members of the organizations mentioned in the draft, which also used special missions in their diplomatic relations. It would be impossible to have different terms according as States belonged, or did not belong, to those organizations. In that respect, the draft final clauses submitted by Ghana and India were more reasonable, although they did not take full account of the principle of universality. By flouting that principle, the great Powers were seriously harming the United Nations and its specialized agencies.

26. International law depended on the will and agreement of States. The formula proposed by France, the United Kingdom and the United States did not reflect the fact that all States, as entities in international law, had the right to participate in international life, exchange diplomatic missions and consular representatives, send special missions to other States, and sign, as they thought fit, treaties, agreements and conventions, including the future Convention on Special Missions. Nothing could deprive a State of that right, for to do so would be contrary to the principle of sovereign equality of States. That was why he could not support the draft submitted by France, the United Kingdom and the United States. Since, as an international legal instrument, the draft Convention on Special Missions must be open for signature by all States desirous of acceding to it, and since any infringement of that principle would limit the scope of the Convention, he would vote for the draft submitted by the USSR, which provided for participation by all States.

27. Mr. ALLOTT (United Kingdom), speaking in exercise of the right of reply, objected that once again it had been said that his delegation had treated the matter as a moral issue. He was glad that the representative of India had recognized the relevance of the views of the Government of Federal Republic of Germany, but he had misrepresented those views. If there were a moral issue involved, it was whether it was right, particularly for States which were proud of their idealism, to champion a long-standing aspect of the foreign policy of one country in the name of a high-sounding principle of universality and, as far as the German people were concerned, in violation of the principle of self-determination.

Organization of the work of the Committee

28. The CHAIRMAN recalled that he had suggested at the 1148th meeting that when the Committee had completed consideration of the draft Convention on Special Missions,

it should take up item 105 of the General Assembly agenda on the forcible diversion of civil aircraft in flight, concentrating first of all on the introduction of the draft resolution in document A/C.6/L.771. Later, after the Committee had completed its consideration of agenda item 88 relating to the report of the Special Committee on the Question of Defining Aggression, it would undertake the

detailed discussion of item 105. If there were no objections, he would take it that the Committee approved his suggestion.

It was so decided.

The meeting rose at 12.55 p.m.