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Agenda item 85:

Draft Convention on Special Missions (*continued*) 1

Chairman: Mr. K. Krishna RAO (India).

In the absence of the Chairman, Mr. Gobbi (Argentina), Vice-Chairman, took the Chair.

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.690, A/C.6/L.694, A/C.6/
L.721, A/C.6/L.722, A/C.6/L.723, A/C.6/L.718)

Article 25 (Inviolability of the premises) (*continued*)

1. Mr. SIDDIQ (Afghanistan) said that his delegation regarded the International Law Commission's text of part II of the draft articles as a well-balanced set of rules and it had therefore not approved any basic changes. It found the present wording of article 25 quite satisfactory. It could, however, accept the proposal in the French amendment (A/C.6/L.694) to reword the first sentence of paragraph 1 of the article, because the French wording was clearer and more precise; but it could not support the French proposal to delete paragraph 3, which was important for the proper functioning of special missions and should be retained.

2. In view of the temporary nature of special missions and the type of accommodation they were likely to have, his delegation could not support the Ukrainian amendment to paragraph 1 (A/C.6/L.690); but in the light of the valid arguments presented in favour of the Ukrainian amendment, his delegation believed that the best solution might be that proposed in the Argentine amendment (A/C.6/L.723).

3. Because of its restrictive nature, the original United Kingdom amendment (A/C.6/L.721) had not been acceptable to his delegation, while the Australian/United Kingdom amendment (A/C.6/L.722) was superfluous and would add nothing of substance to the Commission's text. His delegation would therefore support the Commission's text of article 25, with the French and Argentine amendments to paragraph 1.

4. Mr. NACHABEH (Syria) said that his delegation had already expressed its concern at the concept of "assumed" consent in paragraph 1 of article 25. Its concern had been shared by some members of the International Law Commission, and the Committee's debate on article 25 had confirmed those misgivings;

many speakers had pointed out the differing interpretations to which the term "disaster" might give rise. His delegation would therefore support the Ukrainian amendment (A/C.6/L.690).

5. The French amendment (A/C.6/L.694), particularly the second part of it, and the original United Kingdom amendment (A/C.6/L.721) would unduly restrict the scope of the Commission's text. The Australian/United Kingdom amendment (A/C.6/L.722) improved on the wording of the original United Kingdom amendment without, however, changing the substance, and it was still unacceptable. His delegation had not yet had time to study the amendment of Argentina (A/C.6/L.723) but would give it careful consideration. However, it could not accept any formula which might be open to misinterpretation and abuse.

6. Mr. GORDILLO (Peru) said that in his delegation's opinion the legal basis of part II of the draft was equally valid for all the articles. The facilities, privileges, and immunities accorded to members of a special mission were based on the nature of their task and their capacity as representatives of a sovereign State. It was therefore essential that members of special missions should be protected by a system of rights in international law.

7. The provision relating to assumed consent in the last sentence of paragraph 1 of article 25 was already implicit in paragraph 2 of the article; an express statement of the principle was unnecessary and might lead to abuse. His delegation had therefore been in favour of the Ukrainian amendment (A/C.6/L.690), but would now support the Argentine compromise text (A/C.6/L.723), which seemed acceptable to a majority of delegations.

8. His delegation preferred the International Law Commission's text to that proposed by Australia and the United Kingdom (A/C.6/L.722). It could not support the French amendment (A/C.6/L.694); the proposed rewording of paragraph 1 of the article was unnecessary because that point was already covered in article 11, and his delegation could not agree to the deletion of paragraph 3, because it contained a safeguard needed to maintain a proper balance between the rights of receiving States and sending States.

9. Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) said that the purpose of his delegation's amendment (A/C.6/L.690) was to stress the importance of the inviolability of the premises of a special mission and to strengthen the statement of that principle in the draft Convention. Several delegations had said that if the Ukrainian amendment was adopted, a difficult situation would arise in the case of fire or disaster. The deletion of the last sentence of paragraph 1 of article 25 would not forbid access in such

cases, but would make it subject to the consent of the head of the mission. In practice, it was highly unlikely that that consent would be refused. The omission of such a provision in the Vienna Convention on Diplomatic Relations had given rise to no difficulties. The International Law Commission's text of the article might lead to conflicts of interpretation. It did not make it clear in what circumstances the principle of assumed consent would operate; whether, for example, it would apply only to special missions led by Heads of State, or what would happen in the case of a special mission having premises in more than one building.

10. With regard to the French amendment (A/C.6/L.694), his delegation believed that the proposed change in paragraph 1 might give rise to difficulties by establishing different categories and levels of special missions. The proposed deletion of paragraph 3 of the article would undermine the principle of the inviolability of the premises of special missions. It would also give rise to practical difficulties. Because of the temporary nature of special missions, the measures referred to in paragraph 3 could be applied only at the end of the mission's task. It was also doubtful whether those measures could be applied if a Head of State was present on the premises. His delegation could therefore not support either part of the French amendment.

11. The Australian/United Kingdom amendment (A/C.6/L.722) would unduly restrict the rights of special missions. There was no reason why a special mission should be obliged to use the premises of the permanent diplomatic mission. It would be highly inappropriate to oblige a Head of State leading a special mission to live at his country's embassy if he preferred to use a hotel. The provisions of that amendment might also conflict with the receiving State's customs of hospitality. Nor would the premises of a permanent mission always be large enough to accommodate a special mission. In practice, the amendment would apply in rare cases only. It was out of keeping with the purpose of the Convention, which was to provide general rules to facilitate the work of special missions, and his delegation could not support it.

12. Sir Kenneth BAILEY (Australia) said that the purpose of the Australian sub-amendment, which was now incorporated in amendment A/C.6/L.722, was to adjust the original United Kingdom proposal (A/C.6/L.721) to the fact that the permanent missions of most smaller countries were normally not large enough to accommodate visiting special missions. The joint amendment meant that if a special mission had its own separate premises when it could reasonably have been accommodated at the permanent mission, its separate premises would not enjoy immunities under article 25. The new text would be fair to both sending and receiving States and would also be workable in practice. If the sending State did not think it was reasonably practicable to accommodate the special mission at the premises of its permanent mission, it would inform the receiving State accordingly when notifying it under article 11 of the site of the premises of the special mission. In the absence of any objection from the receiving State to those arrangements, it would be assumed that the separate premises would be inviolable.

13. The Hungarian representative had expressed the view (1065th meeting) that the phrase "reasonably practicable" was too vague to serve as a criterion. However, the interpretation of that expression involved a type of decision that all administrative authorities were accustomed to making. Other criteria requiring the exercise of administrative judgement could be found in a large number of the present draft articles, including articles 11, 23, 25, paragraph 2, and 28, which used such terms as "whenever possible", "suitable" and "appropriate" and implied the possibility of an exchange of views between the sending and receiving States as to what arrangements compliance would require.

14. The sponsors of the joint amendment (A/C.6/L.722) did not agree that the new text would give the receiving State an undue voice in the decision as to the choice of premises of a special mission. It would be the sending State which would decide, in the first place, whether or not it was reasonably practicable to make provision for the special mission within the premises of its permanent diplomatic mission, and that decision would be communicated to the receiving State under article 11. That might give rise to an exchange of views between the sending and the receiving States, but the same would apply under article 11 even in the case where the sending State had no permanent diplomatic mission in the receiving State. In practice, therefore, the position under the joint amendment would be no different from that which already existed under the articles as they stood. What the amendment would do would be to require the sending State to consider in good faith whether it was reasonably practicable to accommodate the special mission within the premises of its permanent diplomatic mission, if any.

15. The Ukrainian representative had said that the Australian/United Kingdom amendment would apply only in rare cases. On the contrary, it would apply whenever the premises of the permanent mission of the sending State were too small to provide for the needs of visiting special missions—a situation which was likely to occur often in practice.

16. Mr. CHAMMAS (Lebanon) said it must be assumed that States would discharge their international obligations in good faith. One of the purposes of the proposed Convention was to improve international relations through the sending of special missions. Sending States surely would not, unless it was absolutely necessary, seek to house their special missions in premises separate from those occupied by their permanent diplomatic missions. In view of the terms of the Vienna Convention on Consular Relations, international practice was to assume consent in the case of fire or any other disaster requiring prompt action. With those considerations in mind the Lebanese delegation felt obliged to vote against the Ukrainian amendment (A/C.6/L.690) and in favour of the International Law Commission's text of paragraph 1. The proposal on that paragraph in the French amendment (A/C.6/L.694) had merits; if a separate vote were taken on it, his delegation would abstain. The French proposal concerning paragraph 3 of the text was, however, unacceptable. Deletion might lead to the assumption that the receiving State could reserve to itself the

right to search or requisition the premises, furnishings, property or means of transport of the special mission.

17. The original United Kingdom amendment (A/C.6/L.721) had been a source of concern to his delegation. The Australian sub-amendment had brought the proposal into balance, but his delegation nevertheless preferred the Commission's text. Sending and receiving States should be given the widest possible latitude in the matter; *ad hoc* diplomacy would succeed or fail according to States' experiences with it.

18. It would have been preferable if the Commission had omitted the words "if appropriate" from paragraph 1 and adopted the more general wording of the corresponding paragraph in the Vienna Convention on Consular Relations. When the final text of the draft was submitted for approval, his delegation would propose the deletion of those words.

19. Mr. DELEAU (France) said that the comments of certain delegations, particularly those of Italy (1066th meeting), had justified his delegation's misgivings concerning paragraph 3. France had already expressed its support of the United Kingdom proposal (A/C.6/L.721), which had been improved by the addition of the Australian sub-amendment, and had stated its objections to the Ukrainian amendment (A/C.6/L.690). It had examined the Argentine amendment (A/C.6/L.723) closely. If it was intended as a compromise solution, it should be weighed very carefully and some of the wording modified. The words "public safety", for instance, would not cover all the cases to which the provisions of the article might apply. If, for example, fire were to break out in an apartment, public safety would not be endangered but the lives of persons in neighbouring apartments might be.

20. The CHAIRMAN put the Ukrainian amendment (A/C.6/L.690) to the vote.

The amendment was rejected by 42 votes to 21, with 20 abstentions.

21. The CHAIRMAN put the Argentine amendment (A/C.6/L.723) to the vote.

The amendment was approved by 48 votes to 5, with 29 abstentions.

22. The CHAIRMAN put to the vote the Australian/United Kingdom amendment (A/C.6/L.722).

The amendment was rejected by 47 votes to 17, with 22 abstentions.

23. The CHAIRMAN put to the vote the two parts of the amendment to article 25 submitted by the delegation of France (A/C.6/L.694).

The amendment to paragraph 1 was approved by 32 votes to 23, with 25 abstentions.

The amendment to paragraph 3 was rejected by 60 votes to 14, with 10 abstentions.

24. The CHAIRMAN put to the vote article 25, as a whole, as amended.

Article 25, as a whole, as amended, was approved by 69 votes to none, with 15 abstentions.

25. Mr. ROSENSTOCK (United States of America) said that his delegation's vote in favour of the Argentine amendment was not a criticism of the International Law Commission's text. The amendment had attempted to indicate how some delegations' difficulties with the Commission's text might be overcome, and his delegation therefore welcomed the proposal as a constructive one and hoped that the Drafting Committee would examine it in order to see how it could be used to improve the existing text.

26. Mr. TENA (Spain) said that, by introducing an element of flexibility, the Australian sub-amendment had rendered the United Kingdom proposal more acceptable to his delegation. The Committee should not lose sight of the differences in the situation of countries with permanent diplomatic missions in the receiving State and those without. Most developing countries were concerned that there should be respect for the privileges and immunities of special missions, which in many cases took the place of permanent diplomatic missions where there were none. There should therefore be no restrictions on the inviolability of a special mission's premises, whether or not the sending State had a permanent diplomatic mission in the receiving State. Hence the Spanish delegation had abstained in the vote on the Australian/United Kingdom proposal, which seemed to imply that the decision in the matter would rest with the receiving State.

27. Mr. LUGOE (United Republic of Tanzania) said that, although at the 1066th meeting his delegation had advocated the deletion of the final sentence of paragraph 1, it had nevertheless voted in favour of the Argentine amendment, since in its opinion the amendment would not impair the principle of the inviolability of a special mission's premises.

28. Mr. MULIMBA (Zambia) said that his delegation had voted in favour of the French amendment to paragraph 1 on the understanding that the text would be examined by the Drafting Committee and if possible amended to read: "The premises of the special mission officially notified to the receiving State shall be inviolable."

29. Although it had voted in favour of the Argentine amendment, his delegation was not satisfied with the words "or other disaster that seriously endangers public safety", which should be replaced by some such words as "or other disaster in circumstances where public safety touching upon the security of the special mission is endangered". A distinction should be made between a disaster which affected the security of the special mission and one which did not.

30. Mr. OGUNDERE (Nigeria) said that, although it appreciated the reasons which had prompted the French delegation to propose its amendment to paragraph 1, the Nigerian delegation considered that the distinctive word "officially" belonged properly to article 1 of the draft Convention. It had therefore abstained in the vote on that proposal. It had voted against the French proposal for the deletion of paragraph 3.

31. Because it regarded the word "may" as permissive, his delegation had abstained in the vote on the Argentine amendment. Given the overriding principle of good faith underlying the article, the receiving

State was required to consult the special mission as much as possible in cases where prompt action was required. That principle of good faith should not be undermined.

32. For the reasons stated at a previous meeting, the Nigerian delegation had voted against the Ukrainian and Australian/United Kingdom amendments.

33. Mr. SONAVANE (India) said that his delegation had voted for the International Law Commission's text and against the French, Ukrainian and Australian/United Kingdom amendments. It felt that the Commission had produced a well-balanced text which adequately safeguarded the legitimate interests of both special missions and receiving States. The Argentine amendment improved the Commission's text without altering its sense; India had therefore voted in favour of it.

34. Given the provisions of article 23 of the draft, the French amendment to paragraph 1 seemed unnecessary. Normally, a special mission would establish its premises with the knowledge and approval of the receiving State. The Indian delegation had therefore abstained in the vote on that proposal. Since there was no reason why special missions should not be accorded the immunities granted to permanent diplomatic missions under article 22, paragraph 3, of the Vienna Convention on Diplomatic Relations, India had voted against the French proposal to delete paragraph 3 of the article under discussion.

35. In many cases, the effect of the United Kingdom amendment would be to force special missions, regardless of their size, to use the premises of permanent diplomatic missions. In practice, many special missions would prefer to use the premises of their diplomatic missions, but if they preferred to have premises of their own, those premises should be inviolable. The Australian sub-amendment had improved the United Kingdom text. As, however, it would be preferable to avoid the possibility of controversy as to whether it was practicable for a permanent diplomatic mission to receive a special mission in its premises, India had voted against the Australian/United Kingdom amendment.

36. The provisions in the last sentence of paragraph 1 would safeguard the legitimate interests of the receiving State and would presumably be applied in good faith by both parties. India had therefore voted against the Ukrainian amendment.

37. His delegation had voted for the approval of article 25 in principle. It hoped that the Drafting Committee would consider the wording of the article carefully. The words "fire or other disaster" might, for instance, be replaced by "fire or other natural disaster" which would make it clear that the disasters referred to were those caused by nature or acts of God.

38. Mr. HAMBYE (Belgium) suggested that, in referring the text to the Drafting Committee, the Chairman should draw attention to the contradiction between the text of article 25, which assumed that a permanent diplomatic mission would have a head, and that of article 14, which indicated that a permanent diplomatic mission might not have a head.

39. His delegation had abstained in the vote on the French proposal to delete paragraph 3 because it felt that, although the provisions of that paragraph might confer certain immunities on third parties not members of the special mission, e.g. a private person who had rented a house to the special mission, the deletion of the paragraph could lead to misunderstanding.

40. Mr. ENGO (Cameroon) said that his delegation had no difficulty with the principle underlying article 25, which touched on a real problem—the protection of special missions from undesirable harassment. It fully accepted the prohibition on entry into the premises of a special mission by agents of the receiving State without the consent of the mission itself. But it could not accept the idea of providing for assumption of consent in a way which gave the receiving State the right to reach unilateral decisions, for it was difficult to place absolute reliance on the good faith of the receiving State.

41. His delegation had voted for the French amendment to paragraph 1 because it offered adequate safeguards; under article 11, sufficient information would be granted to the receiving State concerning the official residence of the special mission, and article 17 would take care of the situation where the special mission had more than one seat, so that it would be easy to define the premises where the special mission was officially established.

42. His delegation had voted against the Australian/United Kingdom amendment because the attempt to force special missions to use the seats of the permanent diplomatic mission presented practical difficulties for young countries which maintained small permanent missions.

43. His delegation had abstained in the vote on the Argentine amendment because, while it was a step forward, it did not fully satisfy the concept that the sending State through its special mission must grant permission for entry in all cases. There might be a difficulty if a genuine fire broke out in premises situated in a hotel, but if the special mission had established a special residence, its express consent to entry must be obtained.

44. His delegation had abstained in the vote on the Ukrainian amendment because, although no other amendment provided for consent, a satisfactory text might be worked out and his delegation did not wish to rule out the idea of some provision at the present stage.

45. His delegation had voted for article 25 as amended, and hoped that its vote would not be taken as approving wanton incursions into the premises of special missions.

46. Mr. OSTROVSKY (Union of Soviet Socialist Republics) said that his delegation had voted for the Ukrainian amendment for the reasons it had stated during the discussion. Although it would have preferred that text, it had not voted against the Argentine amendment, which was based on the principle of the inviolability of the premises of the special mission and recognized that there should be no access to such premises except with the prior consent of the special mission. It had therefore abstained.

47. Mr. MOLINA LANDAETA (Venezuela) said that his delegation preferred the maintenance of the integrity of the International Law Commission's text, and consequently it had been unable to vote for any of the amendments except that of Argentina, which was a very balanced text. His delegation did not like the word "officially" in the French amendment to paragraph 1, but it had nevertheless voted for article 25 as amended, because that amendment added nothing more than what had already been agreed in article 11, paragraph 1 (f).

48. Mr. DABIRI (Iran) said that his delegation had been unable to vote for the Ukrainian amendment. It had voted for the Argentine amendment in the hope that the Drafting Committee would arrive at a wording of the article that would be acceptable to a greater number of delegations.

49. Mr. KASEMSRI (Thailand) said that his delegation had supported article 25 as amended. It had voted for the Argentine amendment on the understanding that consent was to be assumed only where it had not been obtainable owing to the emergency in question and not because of unwillingness to give consent. His delegation welcomed the reference to public safety in the Argentine amendment; the safety of private individuals as well as that of members of the special mission or of the special mission itself was properly a matter of concern to the authorities of the receiving State.

50. Regarding paragraph 3, it was his delegation's understanding that only such other property as was situated on the premises of the special mission and used in its operation was to be covered by that paragraph. He requested that his delegation's observations be brought to the attention of the Drafting Committee.

Article 26 (Inviolability of archives and documents)

51. Mr. ALBAN (Kuwait), noting the stress laid by the International Law Commission, in paragraph (2) of its commentary on article 26, on the inviolability of documents carried on the persons or in the baggage of members of a special mission, especially when the mission was travelling or had no premises of its own, said that circumstances could easily be foreseen where such documents might not be easily identifiable. His delegation did not question the principle stated in article 26, but it thought that inviolability in all circumstances might impose a heavy burden on the receiving State unless the documents were easily identifiable or bore visible external markings. His delegation's amendment (A/C.6/L.718) would facilitate the task of the receiving State without detracting from the principle of inviolability laid down in article 26.

52. Mr. MOLINA LANDAETA (Venezuela) said that his delegation could accept without any reservation both the International Law Commission's text and the Kuwaiti delegation's amendment, which concerned form rather than substance, and anticipated a situation that might readily occur in practice.

53. Mr. EL REEDY (United Arab Republic) said that his delegation supported the principle laid down in article 26. As the question of identifying archives and documents of special missions might create difficulties between the receiving State and the sending State, he also supported the Kuwaiti amendment.

54. Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) supported the International Law Commission's text of article 26, because it would ensure conditions necessary for the normal functioning of special missions. He also supported the Kuwaiti amendment, which would help to eliminate errors in respect of the archives and documents of special missions which, if they were not identifiable, might be destroyed.

55. Mr. POLLARD (Guyana) said that his delegation supported the Kuwaiti amendment for the reasons stated by its sponsor. The International Law Commission's formulation, if approved without qualification, would place a heavy burden on the receiving State, and it was not acceptable to his delegation. He was not happy with the wording of the Kuwaiti amendment, however, and he suggested that the Committee should vote on the principle of that amendment and leave the Drafting Committee to find an appropriate formulation for that principle.

56. Mr. DELEAU (France) said that his delegation supported the Kuwaiti amendment, as it would facilitate the practical application of the International Law Commission's text.

57. Mr. MYSLIL (Czechoslovakia) said that the International Law Commission's text stated a well-established principle of international law as clearly as possible; he feared that the Kuwaiti amendment might create a loophole in that text and offer a pretext for its violation. Archives were generally well marked; lost documents might not easily be identifiable, but, once found, they should be inviolable. Moreover, the Committee was drafting a third convention in the field of diplomatic law and articles 24 and 33 respectively of the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations contained the same provision as article 25, without any loopholes.

58. Mr. DARWIN (United Kingdom) said that his delegation supported the Kuwaiti amendment as a valuable and practical addition to the International Law Commission's text, and would support the Commission's text with that amendment.

59. Mr. PRUDENCIO (Bolivia) said that his delegation supported the International Law Commission's text and the Kuwaiti amendment, which would make that text clearer, more meaningful and better balanced.

60. Mr. KAMAT (India) asked whether the Committee was going to vote on the principle underlying the Kuwaiti amendment or on its wording. His delegation felt that the amendment was actually intended to stress the idea that the sending State should try as far as possible to make the archives and documents of the special mission identifiable. He hoped that, after the Committee had adopted the principle, the wording of the text would be left to the Drafting Committee.

61. The CHAIRMAN said that all amendments were sent to the Drafting Committee, but it would be difficult for the Sixth Committee to vote on a principle rather than a text.

62. Mr. KIBRET (Ethiopia) pointed out that the Special Rapporteur, in his fourth report on the draft articles, had said that the proposed text should not

be changed and that no drafting amendments were necessary.^{1/}

63. Mr. LUGOE (United Republic of Tanzania) asked for clarification concerning the question raised by the Indian representative, since the answer would determine his delegation's vote on the Kuwaiti amendment. Some delegations might agree with the principle of that amendment but not with its formulation. The Committee had previously voted on principles and sent them to the Drafting Committee with a mandate to change the wording. His delegation agreed with the Indian representative's statement of the principle of the Kuwaiti amendment.

64. Mr. KIBRET (Ethiopia) supported the Tanzanian representative's request.

65. Mr. ROSENSTOCK (United States of America) appealed to the Tanzanian representative not to insist on further statements on that question. In his view, the Chairman's answer had been correct. Obviously the Drafting Committee could make changes in the wording in line with the views expressed in the Committee; furthermore, after the Drafting Committee had prepared a text it would be returned to the Committee.

^{1/} See A/CN.4/194/Add.2.

66. The CHAIRMAN said he could only reiterate that the vote would be taken on the principle embodied in a written text, since it would be very complicated to vote on the principle alone. The Drafting Committee had the capacity and authority, taking into account the observations in the Committee, to modify the wording to meet the wishes expressed by delegations.

67. Mr. MYSLIL (Czechoslovakia) said he would not object to voting on a principle if one were involved. It was not clear to him whether the principle underlying the Kuwaiti amendment was that the inviolability of archives and documents could be broken if the archives and documents of the special mission were not easily identifiable, or that all archives and documents must be identified; hence the Committee must vote on the amendment as drafted.

68. The CHAIRMAN put the Kuwaiti amendment and article 26 to the vote.

The Kuwaiti amendment (A/C.6/L.718) was approved by 50 votes to 2, with 24 abstentions.

Article 26, as amended, was approved by 73 votes to none, with 4 abstentions.

The meeting rose at 5.50 p.m.