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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.682, A/C.6/L.692, A/C.6/
L.697, A/C.6/L.719)

Article 21 (Status of the Head of State and persons of high rank) (continued)

1. Mr. BONNEFOY (Chile) said that, in view of the importance of part II of the draft Convention, dealing with the facilities, privileges and immunities which should be accorded to special missions, his delegation was especially concerned to contribute to the preparation of a text which could command general support. Believing as it did that in regard to that matter it was essential to be guided above all by considerations of functional necessity, his delegation felt that the International Law Commission had perhaps been unduly generous in defining the scope of those privileges and immunities.

2. In the view of his delegation, any solution which placed the granting of privileges and immunities at either too high or too low a level would be undesirable; it would be better to try to find an intermediate solution on the basis of which the scope of the privileges granted could be increased or reduced by *ad hoc* agreements. Various amendments had been proposed by the delegations of Belgium (A/C.6/L.682), France (A/C.6/L.692) and the United Kingdom (A/C.6/L.697) with a view to limiting the scope of the privileges and immunities of special missions. His delegation would not support them, for it thought that the quickest and most appropriate way of dealing with the problem would be to determine the scope of the privileges and immunities to be accorded to special missions article by article, within the context of the régime advocated by the Commission.

3. As far as article 21 was concerned, his delegation would have no difficulty in accepting paragraph 1 as it stood, and it was in agreement with the fundamental idea expressed in paragraph 2. However, it had reservations with regard to the words "other persons of

high rank", which it felt to be far too imprecise. The Commission had indeed observed in paragraph (3) of its commentary on article 21 that the titles and ranks of such persons would vary from one State to another according to the constitutional law and protocol in force in each State, but his delegation knew of no rule of international law which was applicable in that regard; the list would therefore most probably be drawn up according to the protocol of the sending State, and there was no reason why the latter should impose it on the receiving State. He accordingly suggested that the Drafting Committee should add after the words "other persons of high rank" the following explanatory phrase: "Agreed upon by the sending State and the receiving State". If article 21 was thus amended, he would support it.

4. Mr. SECARIN (Romania) observed that in dealing with the question of the privileges and immunities of special missions it would be a mistake to apply a method which took into consideration only the interests of the sending State or those of the receiving State, for that would be bound to cause difficulties in either case.

5. In the view of his delegation, the problem must be considered from the standpoint of the common interest of both States in the success of the mission. It was that common interest which, provided that it was in conformity with the interests of the international community as a whole, justified the granting to the special mission of whatever facilities it required for the accomplishment of its purposes, having regard to its nature and task. The special mission should be granted the rights and privileges which it needed if it was to be able to act as an institution of a representative and, therefore, essentially political character, to promote good relations between States and to serve the cause of peace and progress throughout the world.

6. It was in that spirit that the International Law Commission had approached the question, for it had concluded that special missions should, with certain limitations, be granted privileges and immunities similar to those enjoyed by permanent diplomatic missions. In so doing, it had not been simply engaging in an abstract logical exercise, but had sought to endorse the practice of States, which sent special missions to settle important matters that sometimes lay outside the province of conventional diplomacy, and which were concerned to give such missions the protection, the rights and the facilities they needed for the accomplishment of their task. Thus, to try to base the régime of such missions on the system of consular privileges and immunities would obviously be to disregard the diplomatic nature of the special mission. Moreover, the representative character of such mis-

sions and the fact that they fell within the province of international public law and that their task was basically a political one made it essential that they should have the same privileges, regardless of their field of activity. It was hardly necessary to point out that in recent decades relations among States, in all spheres, had acquired increasing political significance. The development of inter-State relations had had repercussions not only on the structure of Ministries for Foreign Affairs and other organs of conventional diplomacy but also on special missions.

7. His delegation saw no reason why different categories of special missions should be established with respect to the privileges and immunities they should enjoy. As other speakers had pointed out, article 21 raised the question of the scope of the rights to be accorded the Head of State, the Head of Government, the Minister for Foreign Affairs and other persons of high rank of the sending State when they participated in special missions. The Commission had replied to that question by deciding that such persons should enjoy both their own privileges and immunities and those accorded them as members of the special mission. That decision was logical and fair and was in accordance with the practice of States. It was hardly conceivable that because he was heading a special mission a Head of Government, for example, should be deprived of the privileges and immunities he enjoyed by virtue of his own status.

8. His delegation regretted that it would be unable to support the amendments proposed by the delegation of Belgium (A/C.6/L.682) and that of the United Kingdom (A/C.6/L.697). It also had reservations with regard to the amendment proposed by the French delegation (A/C.6/L.692), since it preferred the text of article 21 as contained in the draft. However, in the interest of arriving at a text which could receive the support of the largest possible number of States and thus contribute to the progressive development of diplomatic law, it would study with interest any observations and suggestions which might improve the text worked out by the Commission.

9. Jonkheer van PANHUY (Netherlands) wished to pay tribute to the International Law Commission for the work it had done not only in the field of diplomatic and consular relations but also in connexion with special missions. However, the difficulties which were emerging with respect to the latter topic, difficulties which were inherent in the subject-matter, made him hesitate to accept part II of the draft articles. The Commission had tried to work out a uniform system, but such a system might, depending on the nature of the special mission, accord to it too broad or too narrow a range of privileges and immunities. Recalling the observations of the Australian delegation (1057th meeting), he said that a number of systems could be envisaged, according to the functions and the rank of the members of the special mission. He agreed with the Nigerian delegation (*ibid.*) that it was not desirable to encourage the proliferation of privileges and immunities which were not absolutely essential to the execution of the tasks of special missions, and he thought the Ceylonese delegation had been right in observing (1055th meeting) that excep-

tional status was already granted too often, in defiance of the principle of equality before the law.

10. It had been maintained that there should be no difficulty in adopting the Commission's text, since exceptional arrangements could always be made by means of bilateral conventions. That argument was unrealistic, for it failed to take into account the case, for example, of persons of lower rank who were to be sent to a country to carry out functions which did not require the privileges and immunities accorded to diplomatic agents.

11. The United Kingdom approach was that it would be better to have two systems which could be applied automatically. The French delegation had also favoured the idea of establishing two systems. Both those proposals had certain merits and certain shortcomings, for though there might be some advantage in being able to choose between two systems, it was still not clear what criterion should be used in doing so. It might, of course, be possible to establish a distinction based on the functions of special missions rather than the status of their members. From the theoretical standpoint, his delegation tended to prefer a system of that kind, such as had been mentioned by the representative of Barbados (1057th meeting), but such an approach was obviously tantamount to trying to square the circle.

12. Though the system advocated by the United Kingdom delegation seemed to be the most practicable, the Netherlands delegation would prefer the system proposed by France, if the majority of members of the Sixth Committee supported it and approved the French amendments to subsequent articles in part II of the draft. There was, therefore, a problem of procedure to be settled. As it would be difficult at the present stage to take a considered decision on the amendments of France (A/C.6/L.692) and the United Kingdom (A/C.6/L.697) to article 21, it might perhaps be advisable to postpone the vote on them, since delegations would not be able to take final positions in regard to the various systems proposed until they had considered the whole of part II of the draft articles.

13. As to the French amendment, the question arose whether or not the French delegation wished to maintain the words "by the Vienna Convention on Diplomatic Relations", which appeared between square brackets. Reference to a treaty might give rise to psychological objections on the part of States which had not acceded to it. That consideration would lose some of its force should the Ghanaian sub-amendment (A/C.6/L.719), which referred to "privileges and immunities accorded them normally by custom", be adopted. Therefore, the sub-amendment seemed to be acceptable to the Netherlands delegation.

14. Mr. KESTLER FARNES (Guatemala) was convinced that article 21 should be retained. In addition to defining the status of the Head of State and Ministers when they led a special mission, it contained a new element in that the reference to "other persons of high rank" would bring into the scope of the article a situation which arose very often in *ad hoc* diplomacy. Special missions could at any time include elements which were not covered by the conventional classifications, and might consist of persons with widely

differing functions. A recent meeting at Lima of members of Parliament from Latin American countries was an obvious example.

15. The International Law Commission had stated in paragraph (3) of its commentary on article 21 that the list of persons of high rank would depend on the protocol in force in each State. In that connexion, he wished to point out that in certain countries, including his own, there were laws equating the ranks of the executive with those of members of the legislature and the judiciary. It might therefore be useful to compare the relevant laws or customs in different States.

16. In his delegation's view, article 21 of the draft should be retained in its existing form. From paragraph (4) of the general considerations expressed by the Commission at the beginning of part II of the draft, it was clear that the Commission had wished to establish two principles essential to good relations between States—first, that privileges and immunities should be granted having regard to the nature and the task of the special missions, and secondly, that the privileges and immunities granted to special missions were similar to those granted to permanent diplomatic missions. That was the basis it had used in trying to define the privileges and immunities of special missions. Its efforts had given rise to concern among some delegations which believed that, in certain cases, the tasks performed by special missions were not such as to justify granting privileges and immunities. There was justification for the concern of those delegations, but it should not make them forget that the more general a rule was, the easier it was to apply. If a large number of exceptions were attached to it, it might lose all effect. Moreover, in article 50, which provided that States could agree to reduce the extent of privileges and immunities, the Commission itself had quite rightly given States the option of adapting the rule to their own needs.

17. For those reasons, his delegation would not be able to vote for the United Kingdom amendment (A/C.6/L.697), since it thought that it would be impossible to apply in practice. Nor would it vote for the French amendment (A/C.6/L.692), which, though it had the merit of defining the status of the Head of State (paragraph 1), contained other provisions which were too restrictive. It limited the scope of paragraph 2 considerably, since it referred only to the Head of the Government, the Minister of Foreign Affairs and other persons of high rank, which meant that a president of Parliament, for instance, would not enjoy the privileges and immunities granted to a Minister, though the latter was of inferior rank. Finally, if paragraph 3 of the French amendment were adopted, members of special missions other than the persons of high rank referred to in paragraph 2 would be ranked lower than diplomats, although they deserved equivalent status. Such discriminatory treatment might create problems for the sending State.

18. In conclusion, he wished to say once again that his delegation would vote for article 21 as drafted by the Commission. At the same time, it would be prepared to support any proposal for referring article 21 to the Drafting Committee for a precise definition of the term "persons of high rank" in paragraph 2.

19. Mr. ALCIVAR (Ecuador) said that it was difficult for the smaller countries to exercise their rights in regard to privileges and immunities. The legal rules laid down in the draft articles were not, in most cases, derived from customary law, since *ad hoc* diplomacy did not have a tradition of its own. Custom, as a source of international law, had been established merely by the exercise of power. In the modern age, however, a new world and a universal community with unlimited prospects had been created. Unfortunately, most members of that community were at a disadvantage compared with a small minority. International law should therefore be given new dimensions, so that all its branches could be developed and new institutions established to deal with new problems.

20. In private law, the idea of the equality of the parties to a contract had lost ground, since—as was clear from a comparison of the provisions of civil law with those of labour law—it was non-existent in practice. The rules of international law, too, were being derived less and less from custom and more and more from universal and democratic sources. Treaties and conventions, which were the instruments of international law, were being discussed and drafted in an international tribunal. It was not surprising, therefore, that the International Law Commission was to some extent moving away from the theory of pure law and seeking, with ever-increasing idealism, the golden mean between things as they were and things as they ought to be.

21. His delegation was in favour of the system proposed in article 21, and regarded it as the cornerstone of part II of the draft Convention. As the amendments proposed would tend to undermine the work already accomplished, he would not support them. On the other hand, his delegation would not oppose amendments to the articles of part II if they really improved the system of privileges and immunities.

22. Mr. BAYONA ORTIZ (Colombia) said that his delegation shared the International Law Commission's view that special missions should be granted the privileges and immunities essential for the regular exercise of their functions, having regard to their nature and task. That position was quite logical, since it was inconceivable that a State would agree to receive a special mission and at the same time deny it the facilities it required for the accomplishment of its task.

23. It should always be remembered that any one State might be a sending State on one occasion and a receiving State on another, and that efforts should therefore be made to maintain the balance between the rights and duties of those two categories of States. That was the only way of producing a text which would command the support of a large number of countries and thereby contribute to the progressive development and codification of international law.

24. It was from that standpoint that his delegation had considered article 21 of the draft and the amendments to it, and also the comments made on them. As it thought that article 21 should be retained, it could not support the Belgian amendment (A/C.6/L.682). At the same time, it believed that the wording of

article 21 could be improved. It agreed with the comments made at the 1058th meeting by the representative of Iraq, and thought that the French amendment (A/C.6/L.692) would add some useful additional details.

25. It also believed that article 21 should not be put to the vote at the present stage, since an immediate vote might divide the Committee on the very essence of the draft Convention. Article 21 was very important, since it expressed for the first time the general idea which would give the Convention its essential meaning, and every effort should be made to reach a consensus regarding it. The Committee should consider all the following articles, one by one, very carefully, to ensure that they were based on the functional nature of privileges and immunities. His own delegation was prepared to seek a universally acceptable solution which would ensure that the privileges and immunities granted were extensive enough to enable special missions to perform their tasks satisfactorily.

26. Mr. QUERALTO (Uruguay) said that in principle his delegation was in favour of maintaining the structure of the draft Convention, whose provisions established the required balance between the interests of the sending and the receiving States. The deletion of article 21, in particular, could only destroy the underlying unity of the system worked out by the International Law Commission. Most of the members of that Commission had wisely rejected the idea of classifying special missions by their function. What was important was for the missions to have the safeguards needed for the accomplishment of their purpose. The facilities, privileges and immunities provided for in the draft were in general those which would best meet the needs of international life. They should be regarded not as personal advantages, but as means whereby those enjoying them could act without hindrance in the exercise of their particular functions.

27. Article 21 was related to articles 2 and 50 of the draft. On the one hand, article 2 made the sending of a special mission dependent on the consent of the receiving State, and it was evident that such consent would be given only after settlement of the questions raised in that respect. On the other hand, the provision of article 50, paragraph 2 (c) introduced a necessary reservation, allowing for the reduction by mutual agreement of the extent of the privileges and immunities generally granted reciprocally by States, to the general principle of non-discriminatory treatment of States proclaimed in the first paragraph of that article. The flexibility thereby given to the privileges and immunities system should do much to allay the misgivings expressed by certain delegations.

28. In conclusion, he wished to emphasize that the group of countries to which his own belonged was in favour of liberal provisions which would facilitate the functioning of special missions. His delegation therefore could not support the amendments submitted by Belgium (A/C.6/L.682), France (A/C.6/L.692) and the United Kingdom (A/C.6/L.697). However, it would not oppose drafting changes which might improve the wording of the article.

29. Mr. OSTROVSKY (Union of Soviet Socialist Republics) said that the decision taken by the Sixth Com-

mittee at the beginning of its work on special missions to postpone discussion of article 1 of the draft seemed to be the cause of the difficulty found by many delegations in agreeing on the meaning to be given to the term "special mission". Many members of the Committee felt that among the numerous groups sent from one country to another to perform very different tasks, there were some which should not enjoy privileges and immunities, and for which the term should therefore not be used.

30. To dissipate all doubts it was sufficient, first, to define the characteristics of special missions and, secondly, to establish what the nature of their privileges and immunities should be. With regard to the first point, all the elements of an answer were found in paragraph (3) of the International Law Commission's commentary on article 1 of its draft. A special mission was one sent by a State to another State, it must represent the sending State and it must be of a temporary nature. That temporary nature distinguished it from permanent specialized missions, and its representative character made it different from other official visits.

31. With regard to the second point, the representative character of a special mission was the key to the answer. It shared that character with permanent diplomatic missions. The problem of special missions had been raised when the 1961 Vienna Convention on Diplomatic Relations had been drafted, in view of the fact that States did not always have permanent missions and that their ambassadors could not be specialists in all fields. Article 3, paragraph 1 (e), of that Convention provided that the functions of diplomatic missions consisted, *inter alia*, in promoting friendly relations and developing economic, cultural and scientific relations, and representative special missions had the same purpose. In his view, that consideration was fundamental to the discussion of the draft Convention, since it had been a leading factor in its drafting. The Commission, as mentioned in paragraph (4) of the general considerations placed at the head of part II of the draft, had decided that every special mission should be granted everything that was essential for the regular performance of its functions and had concluded that it should enjoy privileges and immunities similar to those accorded to permanent diplomatic missions.

32. The Sixth Committee should not disrupt provisions which were based on the principle thus established. It could, however, examine whether the solutions proposed in the draft did in fact depart from that principle, although the decision to grant more privileges and immunities in certain cases than in others might in some respects be justified. In any event, the radical amendments proposed by France (A/C.6/L.692) and the United Kingdom (A/C.6/L.697) would certainly raise difficulties not only with respect to the principle underlying the draft but also with respect to the method of work to be used. His delegation understood the concerns of the sponsors, but could not approve of them. The United Kingdom amendment could not in fact be reconciled with the solution proposed by the Commission, which was the only one capable of gaining extensive support. The French amendment departed even further from that solution

in the restrictions which it applied to the privileges and immunities necessary for special missions.

33. Those profound divergences represented a real danger to a draft which was the product of years of work. His delegation nevertheless still hoped that the Sixth Committee would give full rein to its spirit of co-operation and understanding in order to find a solution which would satisfy the largest possible number of countries.

34. Mr. PRESBURGER (Yugoslavia) said that his delegation could not approve of the amendments which had been submitted, both because it found the wording of the draft—and in particular of article 21—satisfactory, and because it saw little point in attempting to establish several categories of special missions, which was the aim of the proposals submitted by France (A/C.6/L.692) and the United Kingdom (A/C.6/L.697). Apart from the difficulties of application which had already been mentioned during the debate, such a solution would only complicate the position of certain States which, like Yugoslavia, were already experiencing difficulty in obtaining recognition abroad for the status enjoyed at the national level by certain heads of autonomous organizations and non-governmental institutions, a status sometimes higher than that of Ministers.

35. Although it did not approve of the proposals, his delegation understood the misgivings which they reflected, and felt that it should be possible to take those misgivings into account within the framework of the basic structure of the draft Convention during consideration of the provisions contained in part II of the text. It believed in particular that one part of the French amendment, namely, the phrase "of comparable rank", would be a valuable addition to the wording of article 21 and should be transmitted to the Drafting Committee. On the other hand, the deletion of the phrase "in addition to what is granted by these articles", which appeared in article 21, paragraphs 1 and 2, would deprive the future Convention of an important element, since it would mean that the intention of the drafters had not been to make the Convention the common law for all special missions. Article 21 as drafted showed that, whoever headed a special mission, the mission would enjoy all the facilities necessary to carry out its task, but that if the mission was headed by a Head of State or other high-ranking persons, they would also enjoy the privileges granted to them in practice.

36. His delegation supported maintaining the present wording of article 21, but would welcome any improvements which the Drafting Committee might make in it in the light of the discussions.

37. Mr. LUGOE (United Republic of Tanzania) said that his delegation favoured the approach taken by the International Law Commission with regard to the question of the privileges and immunities of special missions and agreed with the idea contained in paragraph (4) of the general considerations which served as an introduction to part II of the draft. It felt that no exception should be made, without valid reasons, to the general principle of sovereignty and, in addition,

the granting of privileges, which were a manifestation of respect towards a State, should not be extended without due reflection. It fully endorsed the conclusion of the Commission, in paragraph (1) of its commentary on article 21, that the rank of the head or members of a special mission did not give the mission any special status. Nevertheless, it considered that persons of a certain rank, to whom special treatment was accorded under international law whenever they visited a foreign country, should enjoy the same treatment when they were members of special missions.

38. The Tanzanian delegation would vote against the United Kingdom amendment (A/C.6/L.697) because of the difficulties which were bound to arise if different categories of missions were established. That might, for example, lead to the creation of a scale of various kinds of privileges. It would have the effect of establishing a régime for high-level missions rather than a convention on special missions, inasmuch as it contained a proviso whereby the latter might, by agreement, be accorded the privileges and immunities of the former. He emphasized, in that connexion, that it was the task of the Committee to codify the practice of States on the subject under consideration and not to propose a method which would lead to a variety of practices.

39. His delegation considered that the principal criterion in granting privileges and immunities to special missions, which was the functional criterion, was contained in section 14 of the Convention on the Privileges and Immunities of the United Nations. That criterion had been used in various other instruments, including the 1961 Vienna Convention on Diplomatic Relations and the General Convention on the Privileges and Immunities of the Organization of African Unity. On the other hand, he had looked in vain for examples in existing institutions of the distinctions made in the United Kingdom amendment. As the observer from Switzerland had pointed out (1056th meeting), the assumption that an important mission was led in most cases by a person of high rank was not valid.

40. The amendment submitted by the French delegation (A/C.6/L.692) had the merit of recognizing the practice followed for Heads of State and Foreign Ministers and made a positive contribution by providing for extending the same privileges to other persons. However, in the expression "Ministers of comparable rank", the word "Ministers" should be replaced by the word "persons". It might be better, also, to use that expression in the present wording of paragraph 2 of article 21, to replace the words "other persons of high rank". Lastly, the reference in the French amendment to the Vienna Convention on Diplomatic Relations should not be retained.

41. His delegation considered that the Committee must not give the impression of denying the privileges customarily accorded to Heads of State and Foreign Ministers when they led a special mission and, for that reason, it would be unable to support the Belgian amendment (A/C.6/L.682).

42. Mr. MULIMBA (Zambia) read out a text designed to replace article 21 of the draft, worded as follows:

"Article 21

"Status of the Head of State, Head of Government, Minister for Foreign Affairs and other persons of comparable rank

"1. The Head of State, Head of Government and the Minister for Foreign Affairs, when he leads a special mission, shall enjoy in the receiving State or in a third State the facilities, privileges and immunities accorded by international law to them, on an official visit.

"2. Ministers and other members of a special mission of a comparable rank, when they lead or participate in a special mission, shall enjoy, subject to the provisions of this Convention, such privileges and immunities as are normally accorded to diplomatic agents.

"3. Members of a special mission other than those referred to in the preceding paragraphs shall enjoy the privileges and immunities set out in the present Convention."

43. His delegation believed that those provisions would make it possible to consolidate the compromise towards which the Committee seemed to be moving. The approach indicated in paragraph 1 was in fact the one which appeared to enlist general support, particularly after the statements just made by the representatives of Colombia, Romania, the United Republic of Tanzania, the Soviet Union and Yugoslavia, and those made by the representative of Iraq (1058th meeting) and the observer for Switzerland (1056th meeting). Furthermore, paragraph 2, by according to Ministers and other persons of comparable rank the régime applicable to diplomatic agents, reduced the difficulties caused by both the formula proposed by the International Law Commission and the one suggested by the United Kingdom delegation (A/C.6/L.697). With regard to the first formula, doubt had been expressed as to the existence for such persons of any status recognized by international law. As for the second formula, which was based on the régime applicable to the specialized agencies of the United Nations, it had been pointed out that there were many agencies and the régime in question was contractual in origin.

44. In order to avoid any objections motivated by non-ratification of the Vienna Convention on Diplomatic Relations, paragraph 2 of the text just read out, unlike the French amendment (A/C.6/L.692), contained no reference to that Convention. The phrase "subject to the provisions of this Convention", in the same paragraph, referred basically to the provisions of article 50 of the draft, which allowed States to reduce or increase the privileges and immunities they granted one another.

45. Mr. KIBRET (Ethiopia) considered that representative special missions were very similar to permanent diplomatic missions and that the régime provided for in the draft of the International Law Commission, which was based on that similarity, should be adopted. Such missions, because of their specific tasks, owed nothing to the status of the

persons taking part in them. If the persons were of high rank, that fact might symbolize, but did not determine, the importance it was desired to attach to the missions.

46. The amendments submitted by France (A/C.6/L.692) and the United Kingdom (A/C.6/L.697) affected the structure and range of the privileges and immunities of special missions, as established by the Commission. Members of missions who did not hold high rank generally had an important role to play. However, those amendments made them subject, in the absence of an agreement between the States concerned, to a régime of reduced privileges and thus tended to establish two categories of missions. Sending States could therefore, for the sole purpose of placing their missions in the higher category, send a Minister, for example, only for the initial work.

47. Those considerations would determine his delegation's vote on the two amendments concerned. Nevertheless, it reserved the right to give favourable consideration to certain elements of those amendments when the Committee studied the other articles in part II of the draft.

48. Mr. BONNY EBOUMBOU (Cameroon) said that his delegation approved of the present provisions of article 21, since they guaranteed a general minimum standard for the privileges and immunities of special missions without prejudice to any advantages applicable to certain persons of high rank, and defined them with reference to international law. The expression "persons of high rank" should be understood in the light of the constitutional law or the protocol of each State. The formula proposed by the International Law Commission was sufficiently flexible to enable States to come to an understanding on that point, as information had to be communicated on the composition of the special mission.

49. With regard to the amendments now before the Committee, his delegation considered that article 21 had a place in the draft and it could not therefore support the Belgian amendment to delete it (A/C.6/L.682). The wording suggested by the United Kingdom (A/C.6/L.697) would increase the number of régimes applicable, whereas the aim of the present draft was to lay down the general rule on the subject. Furthermore, there was a contradiction between the expression "may be accorded" in the second sentence of the proposed new paragraph 1 and the words "shall enjoy" in paragraph 2 of article 21 of the draft, since the right proclaimed as such in the latter had become conditional and negotiable in the new text. His delegation would have been able to support the French amendment (A/C.6/L.692), particularly since it introduced the functional aspect which was lacking in article 21 of the draft, but it brought the privileges and immunities accorded to Heads of State and Foreign Ministers inappropriately into line with those applicable to diplomatic agents.

Mr. Rao (India) took the Chair.

50. Mr. VEROSTA (Austria) felt that the opposition expressed to the amendments of the United Kingdom (A/C.6/L.697), France (A/C.6/L.692) and Belgium (A/C.6/L.682) was for the most part due to a mis-

understanding concerning some basic concepts which had not been defined. First of all, there was the nature of special missions. Several articles of the International Law Commission's draft might give the impression that special missions had a life of their own and that they were actually legal entities. That was not the case: a special mission was never more than a temporary organ of the sending State composed of individuals who were either officials of the sending State or prominent persons of various kinds, and if, for example, those individuals were killed in an accident, the special mission, and hence its functions, ceased.

51. He wished next to draw attention to the basic fact that the members of special missions could have different ranks, which were conferred upon them by the State of which they were citizens. That was why States in their international practice had always recognized the existence of two or three categories of high-ranking persons. In making a distinction between two categories of special missions, the United Kingdom amendment merely reflected the practice of States and his delegation did not see how anyone could feel that that text destroyed the system worked out by the Commission.

52. The Commission had been right in not classifying special missions according to the task given to them, because that would have resulted in a multiplication of categories. On the other hand, a distinction should be made between special missions according to the persons heading them. The Commission itself had, moreover, recognized the validity of that distinction because it recognized in its draft the existence of three categories of missions: those led by the Head of State, those in which the Head of the Government, the Minister for Foreign Affairs and other persons of high rank took part, and, lastly, all other missions. With regard to the first category, all members of the Committee apparently recognized that the status of the Head of the sending State could be neither affected nor codified by the provisions of the Convention. As far as the second category was concerned, the draft articles did not contain a complete set of regulations governing the status of such high-ranking persons; instead it merely referred to customary international law. The French amendment had the same defect. The United Kingdom amendment had the virtue of filling that gap by according specific privileges and immunities to high-level missions, without referring either to customary international law or to the Vienna Conventions on Diplomatic and Consular Relations, a procedure whose drawbacks had already been pointed out during the debate. His delegation, which felt that all the privileges and immunities of special missions, including high-level missions, should be codified, would vote in favour of the United Kingdom amendment.

53. The French amendment had the great virtue of suggesting a series of changes in articles 22 to 47, which could be discussed seriatim.

54. With regard to the Belgian amendment (A/C.6/L.682), the proposed deletion of article 21 implied that the distinction to be drawn between two or three categories of special missions should be made not in article 21, but in article 1 of the draft Convention; it

was solely because article 1 did not contain the necessary definition that it had had to be stated in article 21.

55. With regard to the procedure to be followed, he suggested that the Committee should first consider articles 22 to 40 and the amendments to them, especially the French amendments, and then decide, in the light of the whole picture, what position it should take on article 21 and article 1. If the present text of article 21 was put to the vote immediately and approved by the Committee, either State might interpret it as prescribing a different system for each of the two categories of special missions or they might lose interest in the Convention. He hoped that a solution acceptable to all delegations would emerge from the debate.

56. Mr. CHAMMAS (Lebanon) said that the position which delegations took on article 21 and on article 1 would influence the positions they would take on the other articles of the draft. Article 1 should therefore be considered first in order to find out which type of system the Committee wanted to adopt. By doing so, it would be following the example of the International Law Commission, which had drawn up a consistent draft.

57. All delegations seemed to recognize the need to accord privileges and immunities to special missions as such and, accordingly, to the persons composing them. However, while some wished to take the Vienna Conventions on Diplomatic and Consular Relations as a basis, others felt that that was not the method to follow. His delegation, for its part, felt that some of the privileges and immunities accorded to special missions by the draft articles were too far-reaching, because, owing to their temporary character, as recognized in article 1, special missions could not have the same privileges and immunities as permanent diplomatic missions.

58. In his view, the Committee must not take an immediate decision on article 21 if it wished to reach a consensus. It should start with article 22, in order to decide what status should be accorded to the persons composing special missions, and it could then revert to article 21. Another possibility would be to consider article 1 beforehand. The members of the Committee would have to reach agreement on the meaning of the words "special missions". Once agreement had been reached on that point, the remaining difficulties might not be insurmountable.

59. Mr. LIANG (China) said he could not see what the present debate could lead to. Rather than hold what might prove to be an academic discussion, the Committee should immediately take up article 22 and the following articles in order to see whether or not the International Law Commission had been too generous in granting privileges and immunities. Only at the end of its discussion could it take a decision on article 21, in regard to which his delegation shared the view of those who felt that the amendments of the United Kingdom (A/C.6/L.697) and France (A/C.6/L.692) would have the effect of upsetting the structure of the draft articles prepared by the Commission.

60. Article 21 gave a special place to high-level special missions. It should be remembered that the

Commission had requested its Special Rapporteur to draw up separate articles for the special missions in that category but had finally abandoned the idea because of the difficulties involved.^{1/} It had been his opinion,^{2/} and that of some members of the International Law Commission and of the Swedish Government,^{3/} that if the head of a high-level mission was entitled to a special status, that was not because he was the head of a special mission but because of his position as Head of State, Head of Government, Member of the Government, etc. While article 21 should not omit all reference to high-ranking persons, that provision could not, in his delegation's view, serve as a basis for setting up categories of persons enjoying different privileges and immunities. That was an additional reason why his delegation considered the United Kingdom and French amendments unacceptable; they destroyed the idea of special missions, which was in itself very flexible.

61. The systems proposed in those amendments had very grave defects if it was remembered that many special missions of very great importance were not led by high-ranking persons; in his delegation's view, it was the functions of the special missions and not the rank of the persons heading them that should be the decisive factor in determining what privileges and immunities their members should enjoy.

62. Mrs. KELLY DE GUIBOURG (Argentina) said that the aim of the International Law Commission had been to give the international community a set of general rules applicable to all categories of special missions, dealing particularly with the privileges and immunities to be accorded to such missions, in view of their representative character and the identity of some of their members. In the draft which it had prepared, the Commission had rejected the idea underlying the United Kingdom amendment (A/C.6/L.697), which would create two categories of special missions depending on the rank of the person who led the mission. The Commission had thus got round certain difficult questions, such as what would happen to the privileges and immunities of a high-level special mission if the high-ranking person leading it returned to the sending country immediately and left the other members of the mission to conclude the negotiations.

63. Her delegation thought that the Commission had been quite right to decide on a uniform status for all special missions, in view of the difficulties which would result from the establishment of different categories. It was therefore unable to support the United Kingdom amendment, since it would have the effect of removing that uniformity without at the same time resolving the difficulties which might arise and which the States concerned would have to settle themselves by special agreements, taking into account the provisions of article 50.

^{1/} See Official Records of the General Assembly, Twenty-first Session, Supplement No. 9, chapter III, para. 69; also, *Yearbook of the International Law Commission*, 1966, vol. I, part II, 882nd meeting, paras. 41-61, and 883rd meeting, paras. 1-6.

^{2/} See *Yearbook of the International Law Commission*, 1964, vol. I, 724th meeting, p. 12.

^{3/} See Official Records of the General Assembly, Twenty-second Session, Supplement No. 9, annex I, p. 50.

64. According to article 21, the rank of the person who led a special mission did not affect the status of the mission and if that person was a Head of State or Government, a Minister for Foreign Affairs or another person of high rank, he retained the status conferred on him by customary international law. Paragraph 1 of the French amendment (A/C.6/L.692) was superfluous, since it did not specify how the position of the special mission and of its other members was altered by the fact that it was led by the Head of the sending State; paragraph 2 of that amendment was unacceptable, because it accorded to the persons of high rank mentioned therein only the privileges and immunities accorded to diplomatic agents, which were insufficient.

65. In conclusion, her delegation supported the text of article 21 drafted by the Commission, on the understanding that the Drafting Committee could make certain improvements, for instance by clarifying, as the representative of Chile had suggested, the meaning of the term "other persons of high rank".

66. With regard to the subsequent articles, which concerned the scope of the privileges and immunities to be accorded to special missions, the Argentine delegation reserved its position, which would be based on the principle that the privileges and immunities should be those needed by the mission in order to perform its task.

67. Mr. PERSSON (Sweden) noted that the Committee had decided to defer consideration of the definition of the term "special missions". It could not yet know, therefore, whether all special missions would be covered by the future Convention and, if some were excluded, where the dividing line would be drawn. In defining a special mission, the draft of the International Law Commission used the concept of "representative character", which the Swedish delegation found too vague. Whatever definition was eventually adopted, moreover, great caution should be displayed in granting privileges and immunities to new categories of persons in addition to those already enjoying a special status in international law.

68. His delegation did not object to special missions led by high-ranking persons being accorded the same privileges and immunities as were enjoyed by permanent diplomatic missions. On the other hand, it did not think it necessary to accord to all other special missions more privileges and immunities than they needed to perform their functions; for that category, the best solution would be to allow the sending State and the receiving State the option of specifically agreeing to regard a particular mission as a special mission within the meaning of the Convention.

69. His delegation favoured the establishment of two categories of special missions, which would be granted different privileges and immunities, as was the case with diplomatic missions and consular posts. That was the aim of the United Kingdom amendment (A/C.6/L.697), which his delegation was therefore prepared to support. It had doubts about paragraph 3 of the text proposed in the French amendment (A/C.6/L.692), which would have the effect of giving the members of a high-level mission less favourable treatment than the head of the mission; such a difference of treatment might raise difficulties when the

mission was crossing the territory of a third State or when it included ambassadors or other persons of high rank. In addition, the text presupposed a separate agreement between the sending State and the receiving State in many cases. On the subject of the procedure to be followed, he agreed with the comments made by the representatives of Austria and Lebanon.

70. Mr. SULIMAN (Sudan) said that his delegation's position on article 21 was determined by the fact that his country was one of the new States with limited resources which could not maintain many permanent diplomatic missions. It shared the view of those who thought that the privileges and immunities of special missions should be functional in character and was therefore opposed to missions led by persons of high

rank being accorded more favourable treatment than other missions. The difficulties which the United Kingdom amendment (A/C.6/L.697) would raise had been explained in an excellent statement by the observer for Switzerland (1056th meeting). The French amendment (A/C.6/L.692) had the same shortcomings, since it would give special treatment to missions led by persons of ministerial rank. His delegation would therefore not be able to support those amendments.

71. In conclusion, he said that his delegation favoured a liberal approach to the question of the privileges and immunities of special missions and therefore supported the existing wording of article 21.

The meeting rose at 6.35 p.m.

