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Chairman: Mr. Gonzalo ALCÍVAR (Ecuador).

*Tribute to the memory of Mr. Gilberto Amado
(concluded)**

1. Mr. DADZIE (Ghana) paid a tribute to Mr. Amado, who had consistently given him fatherly guidance during his career, and he offered condolences to the delegation of Brazil and to the family of Mr. Amado.

AGENDA ITEM 87

Draft Convention on Special Missions (*continued*) (A/6709/Rev.1 and Corr.1; A/7375; A/C.6/L.745, A/C.6/L.747)

2. The CHAIRMAN announced that the Belgian amendment to article 35 (A/C.6/L.686) had been withdrawn.

3. Mr. YASSEEN (Iraq), Chairman of the Drafting Committee, announced that the Drafting Committee was close to agreement on the definition of the term "special mission" and would require one more meeting to conclude its work on that subject.

*Article 30 (Inviolability of the private accommodation)
(A/C.6/L.708)*

4. The CHAIRMAN recalled that, in accordance with the decision taken by the Committee at its 1068th meeting, observations concerning article 30 had been made by several delegations during the discussion on articles 29 and 31 at the twenty-third session of the General Assembly. A summary of those observations would be found in the records of the 1069th to 1072nd meetings. There had not been time to discuss article 30 and consideration of that article had therefore been postponed to the twenty-fourth session.

5. In accordance with the decision noted in paragraph 245 (a) of the report of the Sixth Committee to the General Assembly at its twenty-third session,¹ the only

amendment to article 30 still before the Committee was that submitted by France (A/C.6/L.708), which was also reproduced in document A/C.6/L.745.

6. Mr. DELEAU (France), introducing his delegation's amendment, said that it was submitted in the absence of a satisfactory definition of the term "special mission".

7. There was no justification for granting inviolability to the private accommodation of the representatives of the sending State in the special mission and of the members of its diplomatic staff. Indeed, the provision would be difficult to implement, especially if large numbers of special missions were involved; in addition to raising serious difficulties for the receiving State, the existing wording of article 30 might have undesirable consequences for the actual members of the special mission.

8. As the International Law Commission had recognized in its commentary on article 30,² the expression "private accommodation" could cover a wide variety of situations. Members of special missions often lived in hotels or private homes. The receiving State could not be expected to take special measures to protect the hotel rooms of all members of special missions against intrusion, damage or disturbance. If a fire were to break out in a hotel room occupied by a member of a special mission, it would be unreasonable to require that an attempt be made to contact the head of the special mission or the head of the permanent mission before the necessary steps were taken to extinguish it. In cases where a member of a special mission was living in the apartment of a private citizen, who might be a national of the receiving State, it was not clear whether under the terms of the Convention the whole of the apartment would be inviolable or only part of it, and, if so, which part. Considerable administrative complications would be created by the need to notify all the services concerned—from the police to the fire department—of the fact that a series of hotel rooms should be considered as "inviolable" and given special protection.

9. In addition, despite the provisions of article 11 concerning notifications, changes in arrangements for the private accommodation of members of special missions might not be notified to the authorities of the receiving State until after they had been effected. Alternately, members of such missions would be inconvenienced by being obliged to remain in their original accommodation until the necessary notification had been given.

10. The rule embodied in article 30 might thus involve a number of administrative formalities for the members of

* Resumed from the 1107th meeting.

¹ Official Records of the General Assembly, Twenty-third Session, Annexes, agenda item 85, document A/7375.

² The Commission's commentaries on the articles appear in chapter II of its report on the work of its nineteenth session (Official Records of the General Assembly, Twenty-second Session, Supplement No. 9).

the special mission themselves and might restrict their freedom of action. Some States might therefore wish to insist that the private accommodation of the members of special missions be located in certain specified places; in such circumstances, the members of the mission might prefer to choose their own residence and not have their accommodation covered by inviolability when the need for it was not apparent.

11. With regard to paragraph 2 of article 30, the archives and documents of the members of the special mission could be considered as archives and documents of the mission and were therefore accorded inviolability by the provisions of article 26. The only new element in the paragraph was the inviolability of the property of the representative of the sending State and the members of the diplomatic staff of the special mission; in view of the temporary nature of such missions, however, the provision was superfluous.

12. The French delegation therefore proposed the deletion of article 30, particularly as it was not yet known what type of mission would be covered by that text. If a satisfactory definition of the term "special mission" were evolved, his delegation might adopt a more favourable attitude towards article 30.

13. Mr. SILVEIRA (Venezuela) said that, in the spirit of the 1961 Vienna Convention on Diplomatic Relations,³ special missions should, with certain exceptions required by the special nature of their functions, be granted privileges and immunities analagous to those given to permanent diplomatic missions. In amending the articles drafted by the International Law Commission, the Committee should be careful not to destroy the flexibility and balance of the draft. The inviolability of the premises, archives and documents of the special mission and of the persons and private accommodation of its members was essential for the successful functioning of the mission. His delegation supported the text of article 30 drafted by the Commission and would vote against any amendments proposing its deletion.

14. Mr. PASZKOWSKI (Poland) said that his delegation supported the inclusion of article 30 in the Convention. The inviolability in question was essential to the performance of the special mission's task; it would be quite inappropriate for agents of the receiving State to be allowed freely to enter the private accommodation of the members of the mission without the authorization of the appropriate persons. Protection of the private accommodation of members of special missions from intrusion or damage could not be regarded as an excessive privilege or immunity; indeed, such protection was the normal duty of a State with regard to any person within its territory. If no protection was provided, the members of the special mission would all have to be lodged in the same premises, like soldiers in their barracks. The inviolability of private accommodation was granted not for the personal benefit of the occupants but in order to ensure that the special mission could freely perform its task, which had been authorized by the receiving State.

15. Mr. OGUNDERE (Nigeria) said that he could not support the proposal to delete article 30. The arguments adduced by the French delegation in support of its amendment were not juridical ones and were not related to the functional theory of what was necessary for the performance of the duties of the special mission. It was not true to say that the idea in article 30, paragraph 2, was covered by article 26; article 30 dealt specifically with the private accommodation of members of special missions. Unless the members of such missions had a sense of security and could be sure that their papers would be undisturbed and their private accommodation safe from intrusion, they would not be able properly to perform their duties. No problem would arise if the members of the mission changed their address; under article 11, information regarding changes of address would have to be transmitted to the receiving State.

16. Mr. PERSSON (Sweden) agreed that under the provisions of article 11 the authorities of the receiving State should be notified of the address of the private accommodation occupied by members of a special mission. Since such accommodation was often in hotels, it could not enjoy the same inviolability as that granted to the premises of the special mission by article 25. The extension of inviolability to include private accommodation would entail a risk to the life and property of the other occupants of the hotel and of the members of the special missions themselves. His delegation would not have objected to the idea of inviolability for the private accommodation of members of missions led by persons of high rank. However, the text of the Convention was to apply to all missions, irrespective of their level, and it was not yet known what would be the precise definition of the term "special mission". The Swedish delegation was therefore unable to endorse the text of article 30 drafted by the International Law Commission and would support the French amendment. It would adopt the same attitude in the debate on the other articles of the draft.

17. Mr. ROBERTSON (Canada) said that his delegation's approach to the question was a practical one: Canada hesitated to contract obligations which it would be unable to fulfil. His delegation had been influenced by the scope of the Convention on the Privileges and Immunities of the Specialized Agencies,⁴ which contained no provision concerning the inviolability of private accommodation. His delegation therefore could not support the text prepared by the International Law Commission and would vote for the French amendment.

18. Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) said that in his delegation's view article 30 of the International Law Commission's draft was auxiliary to articles 25 and 26 and amplified their provisions. His delegation supported the Commission's draft and agreed with those delegations which had stressed the inadvisability of upsetting the balance of the draft Convention. If article 30 was deleted, special missions might find it difficult to discharge their functions effectively. His delegation was therefore unable to accept the French amendment.

19. Mr. DADZIE (Ghana) said that the French representative had spoken of the difficulty which receiving States

³ See *United Nations Conference on Diplomatic Intercourse and Immunities, Official Records*, vol. II (United Nations publication, Sales No.: 62.X.1), p. 82.

⁴ See General Assembly resolution 179 (II) of 21 November 1947.

might have in knowing the type of special mission with which they were dealing. However, the Committee had already accepted the principle that there were to be no different grades of special mission and that all special missions were to be entitled to the same privileges and immunities.

20. Mr. VIALI (South Africa) said that his delegation shared the view that private accommodation should be inviolable. If the Convention did not provide for inviolability, the documents and correspondence of special missions, much of whose work had to be done in their members' private accommodation, might be insufficiently protected. The provision in article 26 might be inadequate to safeguard the documents and correspondence of special missions in all the cases which might arise in practice. Furthermore, the inviolability of the private quarters of special missions should extend to all types of accommodation, including hotels. His delegation was therefore unable to support the French amendment.

21. Mr. ROSENSTOCK (United States of America) said that his delegation was sympathetic to the view that article 30 was to some extent superfluous. If it was retained, there would be the practical difficulty that the receiving State would have accepted an obligation which it might find difficult to discharge because it would not know, at any given time, the precise location of the accommodation it was required to protect. The receiving State could not be expected to extend protection to a place of whose existence it was unaware. His delegation therefore proposed that in paragraph 1 the words "which has been previously notified to the receiving State in accordance with article 11" should be inserted after the word "staff".

22. Mr. SANTISO GALVEZ (Guatemala) said that his delegation considered that article 30 should be retained and it would therefore vote against the French amendment. The members of special missions should be accorded the best possible facilities for exercising their functions. His delegation supported the United States proposal, which represented a logical and practical addition to the article; the receiving State had to know what it was required to protect.

23. Mr. MARTINEZ CARO (Spain) said that one of the reasons advanced by the French representative for deleting article 30 was that the elements most important to special missions—personal freedom and inviolability of archives and documents—were covered by other provisions of the draft Convention. However, subsidiary elements, such as the safety of the subject matter of article 30, paragraph 2, and freedom for the special mission to work and entertain in full security in its private accommodation, also needed protection. In addition, there was the question of the dignity of the special mission. A special mission was a channel for communication between two Governments, and it required the same protection as that enjoyed by permanent missions. That was the view which had guided the International Law Commission in drafting article 30. With regard to the United States proposal, he thought that the suggested addition would place article 30 on a different footing from the other articles of the Draft Convention which conferred inviolability. It would be sufficient to rely on the provision for notification of private accommodation in article 11.

24. Mr. ENGO (Cameroon) agreed with those delegations which could not accept the French amendment. The United States proposal was a helpful attempt at a compromise which would allay the fears that had prompted that amendment. If the French delegation accepted the United States proposal, his delegation would comment further on it. Paragraph 2 of article 30 was merely an extension of article 26 and was fully consistent with its spirit. His delegation therefore supported the International Law Commission's text of article 30, although it did not think that the title of the article fully reflected its contents.

25. Mr. KOLESNIK (Union of Soviet Socialist Republics) said that the practical difficulties referred to by the French representative also existed in the case of permanent missions, which were often accommodated in hotels and apartments in the same way as special missions. Since protection had not only to be extended but extended continuously to the private accommodation of permanent missions, it should in fact be less onerous to provide accommodation of permanent missions, it should in fact be less onerous to provide the merely temporary protection required by special missions. The principle underlying article 30 was that the privileges and immunities granted to special missions should be such as to enable them to perform their duties effectively and it would be illogical to deprive special missions of protection purely on grounds of practical difficulties. His delegation therefore supported article 30 as drafted by the International Law Commission.

26. Mr. AL-ALBAN (Kuwait) said that his delegation supported the view that the private accommodation of special missions should be inviolable. However, the accommodation should not enjoy inviolability if it was used as a place of asylum.

27. Mr. DARWIN (United Kingdom) said that article 30 should be seen in terms of the reciprocal obligations of the sending and receiving States: on the part of the former, the obligation to co-operate with the receiving State, including the requirement of notification, as expressly provided for in article 11, and on the part of the latter, the obligation to secure the sending State against harassment. In practice, receiving States only provided full police protection for the private accommodation of special missions in cases where the sending State expected its mission to be harassed by residents of the receiving State. The general rule was that such protection was not provided. He suggested that the Drafting Committee should examine article 30 to see whether the terms "inviolability" and "protection" adequately reflected the practice of receiving States with regard to the private accommodation of special missions. His delegation could support any amendment which took account of the circumstances normally surrounding such accommodation, but in the absence of an amendment of that kind it would be unable to support the International Law Commission's text of article 30. Its attitude to the article might also depend on the definition which the Committee adopted for the term "special mission".

28. Mr. SANTISO GALVEZ (Guatemala) pointed out that a two-thirds majority would be required for the Committee to act on the suggestion concerning the incorporation of the substance of the United States proposal in article 11. That might make it difficult to secure the acceptance of a

notion which would be a valuable addition to the draft Convention.

29. Mr. SOLHEIM (Norway) said that article 30, paragraph 1, placed an excessive burden on receiving States in view of the great practical difficulties involved in providing adequate protection for hotel visitors and residents of temporarily rented accommodation. He did not think the protection envisaged in article 30 was necessary for the proper functioning of special missions, and in any case all States already had an obligation to protect foreigners within their territory. Moreover, the proposed Convention should not include purely paper provisions which could not be implemented effectively. Norway could, however, guarantee that adequate protection would be provided for high-level special missions. His delegation would review its position on paragraph 1 of article 30 in the light of the wording which the Committee adopted for the definitions in the article on the use of terms. With regard to paragraph 2, it considered that the needs of special missions were adequately covered by article 26.

30. Mr. MUNG'OMBA (Zambia) said that his delegation could not support the French amendment because it was contrary to the spirit of the draft Convention as a whole, which was intended to give the maximum protection to the members of special missions. Article 30 was neither superfluous nor inconsistent with articles 25 and 26; in fact, the three articles were complementary. The practical difficulty of implementing a provision was no legal justification for deleting it.

31. Mr. YASSEEN (Iraq) said that he was in favour of retaining article 30 as drafted by the International Law Commission. The United States amendment was, in his opinion, unnecessary and might disturb the balance of the draft Convention. The question of notification was already dealt with in article 11, paragraph 1 (*f*). Moreover, notification should not be a formal condition for granting of inviolability and protection to the private accommodation of members of a special mission, which should be conditional only upon the receiving State's knowing the location of such private accommodation. Good faith was essential for the implementation of any international convention, and the receiving State had an obligation to grant inviolability and protection whenever possible, with or without formal notification. On the basis of good faith, it would naturally be recognized that the receiving State could not be obliged to grant inviolability and protection as laid down in article 30 in those exceptional cases where it could not possibly learn the location of the private accommodation in question.

32. Mr. VANDERPUYE (Ghana) asked the Expert Consultant whether the papers and correspondence referred to in article 30, paragraph 2, meant official papers or private papers. If private papers were meant, there was reason for retaining the paragraph. Otherwise, it was unnecessary, because the question of the inviolability of official documents was already dealt with in articles 26 and 28.

33. Mr. BARTOS (Expert Consultant) replied that article 30 referred to the personal papers and correspondence of the members of the special mission. Such private papers often provided the basis for official documents or they

might, on the other hand, be entirely personal and unrelated to the task of the special mission. Not infrequently a special mission was sent to one or more countries and its members might carry documents relating to negotiations with a number of States. It was inadmissible that the papers and correspondence of the members of a special mission should be examined for the purpose of ascertaining whether they were private or official and whether they were related to the task of the special mission in any one receiving State. That had been the rule applied in diplomatic practice for some time and it should be accepted as a rule of international law.

34. Members of special missions were often obliged to do much of their work in their private accommodation and to keep their official and private papers there. The opinion had prevailed in the Commission that the private accommodation and papers, correspondence and property of members of the special mission should therefore be granted inviolability and that a specific provision should be formulated to cover the situation. The Ghanaian representative was perhaps correct in saying that there was a minor element of repetition in article 30, paragraph 2. That repetition was, however, deliberate and was designed to stress that a special situation existed in the case of special missions. In the view of the Commission, the inviolability of private accommodation was a necessary guarantee for members of special missions.

35. He shared the view expressed by the Iraqi representative that, while it was the duty of the sending State to notify the receiving State of the location of the private accommodation of the special mission, such notification could not be made a prior condition for according such private accommodation inviolability and protection. As stated in article 44, the privileges and immunities of a member of a special mission commenced upon his entry into the territory of the receiving State or upon his assumption of his functions as a member of the special mission. Although it was inconvenient for the receiving State not to receive prior notification of the location of the private accommodation of the members of the special mission, to make inviolability conditional upon such notification would mean impairing the security of the mission's members and would impede the performance of their functions. Of the two alternatives, the Commission had decided that the receiving State should be the one to bear the risk. Article 11, which was now far broader than it had been initially, provided guarantees to both the sending and the receiving State in respect of notification.

36. He therefore considered that the basic principles set forth in the Commission's text of article 30 should be retained. The wording might, however, be changed, if the Committee so wished.

37. Mr. CHAMMAS (Lebanon) said that, although at first his delegation had considered the United States amendment unnecessary, after hearing the subsequent discussion it now felt that the amendment had certain merits. On the one hand there should be no privilege without a corresponding obligation, and, on the other hand, the purpose of the draft Convention was to enhance friendly relations and co-operation between States and to encourage the institution of special missions. He agreed with the Iraqi representative

that good faith must be assumed for the purposes of the implementation of the Convention, but there must be good faith on both sides. Under article 11, the sending State had the obligation to notify the receiving State of the location of the private accommodation of the members of the special mission. However, if a member changed his residence in the receiving State, some time might pass before the receiving State was notified of his new address. In the interval, if the previous tenant had had problems with the law, the receiving State might in good faith enter and search the new residence. Such diplomatic incidents should be avoided. If the receiving State was to accept the obligations imposed by article 30, a safety provision should be included for the receiving State when acting in good faith.

38. In order not to give rise to misunderstandings and imply that the granting of inviolability and protection was

conditional upon notification, he suggested that the United States amendment might be made more flexible by using some such wording as “of which the receiving State has been duly notified”.

39. The CHAIRMAN said that the Committee now had before it three amendments to article 30, submitted by the representatives of France, Ghana and the United States respectively, and an informal sub-amendment submitted by the representative of Lebanon. The amendments of Ghana and the United States would be circulated as official documents in time for the next meeting of the Committee. He suggested that the representatives of the United States and Lebanon might perhaps consult together and draft a joint amendment.

The meeting rose at 6 p.m.