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Chairman: Mr. Gonzalo ALCÍVAR (Ecuador).

*Tribute to the memory of Mr. Abdirashid Ali Shermarke,
President of Somalia*

*On the proposal of the Chairman, the members of the
Committee observed a minute's silence in tribute to the
memory of Mr. Abdirashid Ali Shermarke.*

1. Mr. ENGO (Cameroon), speaking on behalf of the African delegations, Miss LAURENS (Indonesia), speaking on behalf of the Asian delegations, Mr. ARBELAEZ (Colombia), speaking on behalf of the Latin American delegations, Mr. SCIOLLA-LAGRANGE (Italy), speaking on behalf of the group of Western European and other countries, Mr. USTOR (Hungary), speaking on behalf of the socialist delegations, Mr. EL-ATTRASH (Syria), speaking on behalf of the Arab delegations, Mr. HYERA (United Republic of Tanzania), speaking as Chairman of the Afro-Asian group, and Mr. NJENGA (Kenya) paid tributes to the memory of the President of Somalia and asked the Somali delegation to convey condolences on the occasion of his tragic death to the Government and people of Somalia and to the family of Mr. Shermarke.

2. Mr. MUSSA (Somalia) thanked the members of the Committee for their expressions of sympathy and said that he would convey their condolences to the Government and people of his country and to the relatives of the late President.

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)**

Article 1 (Use of terms) (A/C.6/L.751)

3. Mr. YASSEEN (Iraq), Chairman of the Drafting Committee, introduced the text of article 1, sub-paragraph (a), adopted by the Drafting Committee (A/C.6/L.751). The definition of the term "special mission" was a delicate compromise achieved as a result of the spirit of co-operation displayed by the members of the Drafting Committee.

4. The Drafting Committee had made two changes in the wording of the definition drafted by the International Law Commission in article 1, sub-paragraph (a); the changes in no way altered the nature of special missions, as envisaged by the Commission.

5. First, the Drafting Committee had considered that it would be preferable to spell out in the text of the Convention a characteristic which the International Law Commission had mentioned in paragraph (3) (ii) of its commentary on the article: the special mission must represent the sending State. In the version in French—the language in which he himself had suggested the compromise in the Drafting Committee—the words "de l'Etat" had therefore been added after the words "ayant un caractère représentatif". Similar additions had been made in the Spanish and Russian versions. Despite the efforts of the English-speaking delegations and of the language services in the Secretariat, it had not been possible to find a literal translation into English. In the English text, therefore, the expression "a mission of a representative and temporary character", in the text of the International Law Commission, had been replaced by the expression "a temporary mission representing the State". In paragraph (3) (ii) of the commentary of the International Law Commission on the article, the sentence "Elle doit avoir un caractère représentatif de l'Etat d'envoi" had been translated "It must represent the sending State". He did not believe that any misunderstanding could arise and, if necessary, the meaning of the English text would be clarified by the other language versions.

6. Secondly, the concept of the consent of the receiving State had been added to the definition of "special mission". That concept had been taken from article 2, already adopted by the Sixth Committee. The Drafting Committee had felt that the consent of the receiving State was an essential prerequisite for the sending of a special mission and should be mentioned in the definition.

7. Those two changes had necessitated slight stylistic modifications, which did not affect the meaning of the text adopted by the International Law Commission.

Article 34 (Exemption from personal services) (continued)

8. Mr. BARTOS (Expert Consultant), replying to a point raised at the 1125th meeting by the representative of Trinidad and Tobago, said that the International Law Commission had discussed at length whether the exemption embodied in the article should be formulated as a right granted to the members of the special mission or as an obligation imposed on the receiving State. It had felt that, if article 34 were worded in such a manner as to confer upon members of the mission the right to request exemp-

tion, problems might arise in cases where minor officials of the receiving State refused the exemption. If the receiving State was obliged to grant the exemption, it would be responsible for any failure to do so and the exemption would be respected.

9. Mr. BADEN-SEMPER (Trinidad and Tobago) said that, in the light of the Expert Consultant's explanation, he would not submit an amendment to article 34. His delegation understood that article to mean that the right granted therein to members of special missions was no different from the rights granted in preceding articles of the Convention and that the representatives of the sending State would have the right to demand exemption from the services in question.

10. Mr. BARTOS (Expert Consultant) agreed that the persons and the State concerned could always ask that the obligation imposed by article 34 be respected, since it represented a positive duty of the receiving State.

11. The CHAIRMAN said that, since no amendments had been submitted, he would assume that the Committee approved draft article 34, as proposed by the International Law Commission.

It was so decided.

Article 35 (Exemption from customs duties and inspection) (A/C.6/L.701, A/C.6/L.711)

12. Mr. ALLOTT (United Kingdom), introducing his delegation's amendment (A/C.6/L.701), noted that the Committee was still handicapped by the fact that no decision had been taken on article 1 (a) of the Convention. His delegation proposed the deletion from article 35 of the reference to the members of the families of persons in special missions, because it considered that the regulations governing families should be stated only in article 39 and not elsewhere in the Convention. Article 39 referred to "the privileges and immunities specified in articles 29 to 35". The amendment was essentially a drafting change. However, retention of a reference to families in both article 35 and article 39 might have certain implications and raise doubts regarding the position of family members who were nationals of or permanently resident in the receiving State. Such persons were excepted in the provisions of article 39 but not in the provisions of article 35.

13. Mr. DELEAU (France), introducing his delegation's amendment (A/C.6/L.711), agreed that the lack of a decision on the definition of the term "special mission" did not facilitate the Committee's work. The concept of "official use" embodied in paragraph 1 (a) of the International Law Commission's draft of article 35 was not sufficiently precise. In the view of the French delegation, special missions should enjoy exemption from customs duties and inspection in the case of articles from their administrative functioning, such as office equipment.

14. In addition, in view of the temporary character of special missions, their members should enjoy exemption from customs duties with respect to articles for their personal use only at the time of their arrival in the receiving

State. Any other arrangement would not reflect a functional necessity and would be open to abuses.

15. It would be advisable to have those two principles clearly expressed in article 35. Furthermore, there seemed to be no justification for granting exemption from customs duties and inspection to members of the family of those participating in a special mission. In view of the temporary nature of special missions, the presence of the family of the members of such missions was not as important as it was in the case of permanent diplomatic missions.

16. Mr. MOE (Barbados) said that, although it recalled the corresponding provision in the Vienna Convention on Diplomatic Relations, paragraph 1 (b) of article 35 was not entirely acceptable to his delegation. The granting of exemption to articles for the personal use of members of the mission did not correspond to a functional necessity and would cover too wide a range of articles. The Belgian amendment (A/C.6/L.686) had been a suggestion in the right direction.

17. His delegation also had reservations about the granting of exemption to members of the family of those participating in special missions. That provision could cover a number of persons for whom the exemption was not necessary to the proper functioning of the special mission. His delegation saw some merit in the United Kingdom amendment. It felt, however, that when reference was made to the members of the family of a person in the special mission—either in article 35 or in article 39—the words "forming part of his household", which had been used in article 36 of the Vienna Convention, should be added. Exemption should be granted only to members of the immediate family.

18. The French amendment was unduly restrictive, particularly in the case of paragraph 1 (a). His delegation would vote against that amendment.

19. Mr. CASTREN (Finland) said that his delegation would support the United Kingdom amendment, because the reference to family members in article 35 would duplicate the provisions in article 39. It reserved its position regarding the status of family members under article 39.

20. His delegation could not support the French amendment and preferred the text drafted by the International Law Commission. Although the amendment to paragraph 1 (a) appeared to be a drafting change, it would be preferable to follow the wording used in the Vienna Convention. The amendment to paragraph 1 (b) was too restrictive.

21. Mr. OGUNDERE (Nigeria) said that he was in general agreement with the United Kingdom proposal, which was merely a drafting amendment. It was logical that the provisions concerning the privileges and immunities of the families of special missions should be concentrated in article 39. He endorsed the previous speakers' view that the French amendment was too restrictive. The French proposal was prompted by the fear that article 35, as it stood, might open the door to the abuse of privileges, but the draft Convention contained several provisions to safeguard the receiving State: the requirements of consent in article 2 and notification in article 11, paragraph 1 (a), and the right

to declare a person *non grata* in article 12. His delegation would therefore support the United Kingdom proposal and vote against the French amendment, although it hoped the latter would be withdrawn.

22. Mr. ROBERTSON (Canada) said that his delegation shared the views of the Barbadian representative about paragraph 1 (b) and would vote in favour of the United Kingdom amendment. It found no other difficulty with the article.

23. Mr. ROMPANI (Uruguay) said that he was in fundamental agreement with the United Kingdom proposal, whose purpose was to restrict as far as possible those articles which could be imported free of duty. However, the word "household" used in article 36 of the Vienna Convention on Diplomatic Relations represented an even more satisfactory solution to the problem of finding a restrictive criterion which was still wide enough to be fair. Of course, words such as "household" in English and "casa" in Spanish raised semantic problems, since although they were used as equivalents they did not have precisely the same scope. The semantic aspect was also apparent in the French amendment. The term "administrative" which it would introduce was more specific than the International Law Commission's expression "official", but the latter was firmly enshrined in international usage. If the Committee adopted either the French amendment or paragraph 1 (a) as it stood, it would be departing from established formulae. On balance, however, he preferred to leave article 35 as it was.

24. Mr. CHAILA (Zambia) supported the United Kingdom proposal, which solved a purely drafting problem. His delegation would vote against the French amendment, because it preferred the International Law Commission's terminology.

25. Mr. NJENGA (Kenya) could not accept the United Kingdom amendment, because it could result in anomalies. If it was adopted, members of the family would be covered solely by the provision in article 39, paragraph 1, which raised the question of nationality. The acquisition of nationality was a matter of domestic law varying from country to country; in some cases it was based on paternity and in others on the place of birth. The situation might arise that a member of a special mission travelled to the receiving State with his wife and she gave birth to a son during their stay. If, by the law of the receiving State, the son took the nationality of the country where he was born and subsequently accompanied his father on a special mission, he would not, if the United Kingdom proposal was accepted, be entitled to the benefits conferred by article 35. With regard to the French amendment, his delegation considered it too restrictive. It therefore favoured the adoption of article 35 as drafted by the International Law Commission.

26. Mr. VANDERPUYE (Ghana) said that he supported the United Kingdom amendment, but that even if it was adopted his delegation would still find paragraph 1 too liberal, despite the view expressed in paragraph (4) of the International Law Commission's commentary on the article. There should be some element of mutual consent with regard to the privileges and immunities grantable under

article 35. The question of the duty payable on imports of alcoholic beverages, for example, was particularly important to developing countries, which could not afford to lose revenue because of the provisions of article 35. He therefore proposed that in paragraph 1 the word "shall" should be replaced by the words "may, by mutual consent with the sending State". The element of mutual consent was also present in the text of article 1 (a) submitted to the Committee by the Drafting Committee (A/C.6/L.751).

27. Mr. ENGO (Cameroon) said that a satisfactory balance had to be struck between the need to avoid giving the members of special missions excessive privileges and immunities and the importance of not restricting those privileges and immunities to such an extent that special missions could not discharge their duties effectively. His delegation shared some of the concern voiced by the Ghanaian delegation. In considering the position of the families of members of special missions it had to be remembered that they were not persons chosen for inclusion in the mission by the sending State itself; the only persons in that category were the members of the mission, who were therefore entitled to the full range of privileges and immunities. Consequently his delegation supported the United Kingdom amendment, which would remove an unnecessary element already covered by article 39 and eliminate matters not directly connected with the functioning of the special mission.

28. The Ghanaian amendment also deserved sympathetic consideration, because the notion of mutual consent ought to apply to the families of members of special missions. He thought that the composition of the family should be part of the information which the sending State was required to give the receiving State.

29. With regard to the French amendment, he had doubts as to the meaning of the words "administrative functioning of the special mission", which were capable of several interpretations. His delegation was perfectly satisfied with the expression "official use". In any case, the French proposal was too restrictive; the members of a special mission might not discover until after their arrival that certain articles were essential. His delegation would therefore be unable to support the French amendment.

30. Mr. ALVAREZ TABIO (Cuba) said that at first sight the United Kingdom amendment seemed acceptable on the ground that the words it sought to remove were superfluous in view of the provision in article 39, paragraph 1. But he was concerned about another aspect of the amendment. Because of the provisions of article 35, paragraph 2, the effect of deleting the words in question could be to allow the receiving State to inspect the baggage of a member of the special mission travelling with his wife and family. Consequently, the rule was *lex specialis* as far as article 39 was concerned. His delegation therefore found the United Kingdom amendment unacceptable and would vote against it.

31. Mr. EL-ATTRASH (Syria) asked the Expert Consultant why the members of the family had been specifically referred to in article 35, paragraph 1 (b), when their case was already dealt with in article 39.

32. Mr. BARTOS (Expert Consultant) said that the apparent duplication was due to an error on his own part, as Special Rapporteur, and that article 39, paragraph 1, should refer only to articles 29 to 34 and not to articles 29 to 35. Members of the family were referred to in article 35, paragraph 1 (b), in order to make it clear that it was only in respect of articles for their personal use that exemption was granted. In its consideration of article 35, the Drafting Committee should take account of the fact that the provisions of article 39 did not apply to it, in order to ensure that undue limitations were not placed on the privileges accorded to members of the family in respect of customs duties and inspection.

33. With regard to the comments made by the representative of Uruguay, he stressed that, as stated in paragraph (2) of the Commission's commentary on article 35, the Commission had used the expression "members of their family who accompany them" instead of the corresponding expression in article 36 of the Vienna Convention on Diplomatic Relations, "members of his family forming part of his household", because it had considered that, in view of the characteristics of special missions, it should be possible for members to be accompanied by persons of their family who did not normally form part of their household. The privileges and immunities accorded to members of the family would apply only in the case of those members of the family who were chosen by State representatives and diplomatic staff to accompany them for the purpose of assisting them. For example, in the case of a member of a special mission who was very old or sick, such a companion was essential.

34. Again, as stated in paragraph (3) of the commentary on article 35, the Commission had not inserted in paragraph 1 (b) a clause corresponding to that in article 36 of the Vienna Convention, which specified that exemption from customs duties covered articles intended for the establishment of a diplomatic agent, since such a clause would hardly be justified in a draft dealing with special missions, whose members generally spent too short a time in the receiving State to warrant establishment.

35. With regard to the French amendment to article 35, the Commission had used the term "official use" in article 35, paragraph 1 (a), because of the nature of special missions. Some special missions required equipment for purposes other than administrative ones. For example, in the case of a special mission appointed to carry out delimitation operations, the articles for its "official use" would include such items as copying machines and map-reproducing machines.

36. In the first part of article 35, paragraph 1, the words "the receiving State shall permit entry . . ." had been used because the Commission had felt that, although the relevant domestic laws and regulations would apply, the granting of the exemption specified in article 35 was, in principle, an obligation on the receiving State. Article 35 was based on article 36 of the Vienna Convention on Diplomatic Relations, but had been made more restrictive in its terms in

order to take account of the views of those delegations, including those of the United Kingdom and the United States, which had felt that the article permitted undue latitude in respect of imports.

37. Mr. SOLHEIM (Norway) said that, although he had at first felt that the United Kingdom amendment was largely technical in nature, after hearing the explanation of the Expert Consultant he understood the Commission's reasons for referring to members of the family in article 35 and realized that the key words were "who accompany them". He found that explanation very satisfying.

38. He also endorsed the Expert Consultant's remarks concerning the difficulties that might be raised by the first part of the French amendment.

39. While he appreciated the motive for the Ghanaian amendment, he felt that it would introduce an element of ambiguity into the draft Convention, because the question of consent was already referred to in the definition in article 1 (a) adopted by the Drafting Committee (A/C.6/L.751) and in article 2, which had already been adopted by the Sixth Committee. To mention it in article 35 would raise the question why it had not been referred to in the other articles dealing with privileges and immunities also. His delegation would therefore oppose the Ghanaian amendment if it was put to the vote.

40. Mr. ANDRIAMISEZA (Madagascar) said that his delegation had intended to support the United Kingdom amendment, but that, after hearing the explanation of the Expert Consultant, it could no longer do so. The first part of the French amendment seemed too restrictive, because a special mission might require other than administrative services. He could, however, support the second part of the French amendment, because it might be wise to place some limitation on imports into the receiving State, so as to avoid abuses.

41. The Ghanaian amendment raised the question whether the consent would be given before the special mission's departure or on its arrival in the receiving State. In the latter case, the receiving State might withdraw its consent at the airport, if it decided that the privilege in question had been abused. Such a provision might give rise to considerable inconvenience for the special mission.

42. Mr. MUNIM (Pakistan) said that his delegation considered that the provisions of article 39 should apply to all the privileges and immunities specified in articles 29 to 35. Acceptance of the United Kingdom amendment might give rise to uncertainty as to whether members of the family could be prevented from enjoying customs exemption in respect of articles for their personal use. Since his delegation considered that such articles should be exempt from customs duties and inspection, it would support the Commission's text of article 35.

The meeting rose at 6 p.m.