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Chairman: Mr. Gonzalo ALCÍVAR (Ecuador).

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)**

1. The CHAIRMAN noted that difficulties had arisen when amendments were submitted towards the end of the discussion of a draft article and delegations did not have sufficient time to study them and consult their Governments. He therefore suggested that, as the Committee advanced in its consideration of the draft Convention, he should set dead-lines for the submission of amendments to each article.

It was so decided.

*Article 39 (Members of the family) (continued)
(A/C.6/L.754-758)*

2. Mr. SANTISO GALVEZ (Guatemala) introduced the amendment submitted by his delegation (A/C.6/L.757), which represented an attempt to define the family members whom a person participating in a special mission might find it strictly necessary to take with him. The term "spouses" covered husbands and wives. Parents who had reached a certain age were often economically dependent upon their child, who might wish to take them with him on the mission. In addition, minor children and unmarried daughters who had reached majority but were economically dependent might also have to accompany the person concerned. His delegation did not agree that the consent of the receiving State should be required before privileges and immunities were granted to any members of the family of persons serving in special missions. However, it could accept the idea in the second sentence of the Tunisian amendment (A/C.6/L.754) to the effect that relatives other than those listed in the definition might enjoy privileges and immunities as authorized by the receiving State. Thus, if the Tunisian delegation could agree to the definition contained in the Guatemalan amendment, the two delegations could perhaps submit a joint text.

3. Mr. SOFIANOPOULOS (Greece) said that his delegation could have supported the original French amendment (A/C.6/L.714), the Tunisian amendment (A/C.6/L.754)

and the Colombian amendment (A/C.6/L.755). The new French amendment (A/C.6/L.756) removed all the difficulties, since the proviso concerning the agreement of the receiving State would eliminate any possibility of misunderstanding. His delegation had submitted its amendment (A/C.6/L.758) because it thought that the idea in the Colombian amendment to paragraph 1 should also be included in paragraph 2 of article 39. The same idea had been expressed in article 35. His delegation could not support the Guatemalan amendment (A/C.6/L.757), since it thought that the question was a matter for agreement between the States concerned.

4. Mr. BREWER (Liberia) noted that, although articles 37, 38 and 40 granted certain privileges and immunities to members of the service staff of the special mission, to the private staff of the members of the special mission and to representatives of the sending State in the special mission and the members of its diplomatic staff who were nationals of or permanently resident in the receiving State, article 39 made no provision for the granting of privileges and immunities to the families of persons in those categories. He would welcome an explanation of that omission from the Expert Consultant.

5. His delegation supported the new French amendment, which would improve the text of article 39. It could not support the Colombian amendment, for the reasons advanced by previous speakers. It thought that the Convention should include a definition of the expression "members of the family"; however, the definitions proposed in the amendments of Guatemala and Tunisia should be considered in the context of article 1, on the use of terms. In its existing wording, the definition in the Tunisian amendment was unacceptable because the inclusion of the word "issue" made it too restrictive when viewed in the context of African customs.

6. Mr. USTOR (Hungary) said that the Convention should take into account the interests of both receiving and sending States. The new French amendment was weighted in favour of the receiving State and did not take into account existing international practice with regard to the granting of privileges and immunities to the families of special missions. Such missions might last for some time and their members should be able to bring with them their families, and particularly their spouses, to whom the diplomatic privileges and immunities specified in articles 29 to 35 should be granted. In particular, immunity from jurisdiction was a functional necessity also for the families of those participating in special missions. It would be unpleasant and cumbersome for the sending State to have to seek the agreement of the receiving State before such privileges and immunities could be granted, and humiliating for the member of the special mission, who would not wish

to expose himself to a possible refusal. The French amendment would thus have the effect of discouraging members of special missions from bringing their families with them. In fact, the matter should be left to the good faith and courtesy of the States concerned; the receiving State had a wide choice of diplomatic measures which it could use to protect itself against abuses in that connexion. The Hungarian delegation preferred the original text proposed by the International Law Commission.

7. Although his delegation would consider any reasonable proposal along those lines, it felt that it was difficult, if not impossible, to evolve a universally acceptable definition of the expression "members of the family". In practice, the lack of a definition had not caused any great difficulties for special or permanent missions.

8. Mr. MUNIM (Pakistan) considered it unnecessary to amend article 39, as drafted by the International Law Commission. Special missions were of a temporary character and the provisions governing them could not be broader in scope than those of the Vienna Convention on Diplomatic Relations. In their international relations, States should bear in mind that the concept of what constituted "the members of the family" varied from country to country and adopt a progressive interpretation of the term. Any problems which arose would be resolved through the good sense and courtesy of the receiving State and in the light of the body of practice which would emerge. Similarly, there was no need to refer, as proposed in the Guatemalan amendment, to the possibility of members of special missions being accompanied by large numbers of children, dependants or relatives who were not normally considered as members of the family. The second sentence of the Tunisian amendment weakened the point of that amendment. The Pakistan delegation could not support the Colombian amendment, which had no rational basis.

9. His delegation did not favour the inclusion of a reference to the agreement of the receiving State, as proposed in the new French amendment. One had to assume that common courtesy and reasonableness would be displayed by those concerned and the matter should be governed by an understanding between the parties, rather than by an express legal provision.

10. Mr. GARCIA ORTIZ (Ecuador) said that the International Law Commission, in drafting article 39, had rightly refrained from defining the expression "members of the family". A study of comparative law showed how difficult it would be to attempt such a definition. That aspect of the matter should be left to State practice on the subject. The rule expressed in article 39 should reflect what was the usual case, namely that the head of a special mission, for instance, travelled with his wife and children but not necessarily with his entire household. Some delegations had maintained that the express consent of the receiving State should be necessary to entitle accompanying members of the family to the benefits of article 39, but to stipulate that consent would be to discriminate against members of special missions. In the light of those general considerations, his delegation could not support the Tunisian and Guatemalan amendments because they sought to introduce a definition of the family which might conflict with the civil law of many countries. The Tunisian amendment was

also defective logically in defining the phrase "members of the family" restrictively in the context of the article and then speaking of "other members of the family" in the same context.

11. His delegation favoured the first part of the Colombian amendment and the Greek amendment; both proposals echoed a suggestion he had made during the discussion of article 35 (see 1127th meeting). It could not, however, accept the second part of the Colombian amendment, which would introduce a restriction that might conflict with some countries' views of what constituted the family. His delegation would also oppose the French amendment, because it was inappropriate in a general provision like article 39 to leave it to the receiving State to decide whether a member of a special mission could be accompanied by members of his family.

12. Mr. VALLARTA (Mexico) said that his delegation held the view expressed by the International Law Commission in paragraph (2) of its commentary on article 35. The persons referred to in that paragraph should enjoy the benefits provided under article 39. Mexico opposed the Guatemalan amendment and the first sentence proposed by Tunisia because they did not cover those persons. It also found the second sentence proposed in the Tunisian amendment unacceptable; the amendment as a whole was badly formulated from the legal point of view and would make the future Convention difficult to apply. His delegation favoured the Greek proposal and the first part of the Colombian amendment. Both proposals should be examined by the Drafting Committee, in the latter case with a view to making it clear that the concept of accompanying members of the family included those arriving in the receiving State after the arrival of the member of the mission himself. His delegation could not support the second part of the Colombian amendment, since it would impose an undesirable limitation in the case of special missions which lasted for a very long time. Mexico also objected to the French proposal, on the ground that it would complicate the operation of the future Convention if the requirement of consent was stipulated too often.

13. Mr. ARBELAEZ (Colombia) said that his delegation had never questioned the right of members of special missions to be accompanied by their families or the right of the latter to enjoy the same privileges and immunities as the International Law Commission's draft accorded to the former. It accordingly opposed the Tunisian amendment, because the latter's definition of the family was too restrictive and excluded the persons referred to in paragraph (2) of the Commission's commentary on article 35; moreover, the second sentence of the amendment imposed a further restriction by introducing the element of the consent. The French amendment also suffered from that disadvantage. The Guatemalan proposal did not embody the element of consent and was therefore more attractive, but his delegation could not accept it, again because of its restrictive view of the extent of the family.

14. With regard to his own delegation's amendment, Colombia's intention was that the words "accompanying the former or the latter" were to be construed as including members of the family arriving after the member of the mission himself. Its purpose in the second part of the

amendment was to lay down a reasonably ample criterion for determining who should be entitled to the benefits envisaged under article 39.

15. Mr. UOMOTO (Japan) said that the question who should enjoy the privileges and immunities referred to in article 39 was governed by the theory of functional necessity, which the Committee had accepted as a ruling principle. It was sometimes desirable and conducive to the work of a special mission for its members to be accompanied by their families, but that was no reason why the families should enjoy the same benefits as the members. The temporary nature of special missions and past State practice supported his view. Members of families accompanying members of special missions should receive privileges and immunities only if their presence was essential to the functioning of the special mission. The wording which would have satisfied the Japanese delegation would have been the International Law Commission's draft as amended by the earlier French amendment (A/C.6/L.714), which had been withdrawn. As it stood, the Commission's wording went too far; his delegation therefore favoured the new French amendment (A/C.6/L.756), which would restrict the effect of the article by introducing the notion of consent.

16. Mr. KOSTOV (Bulgaria) said that the Committee should approach article 39 from the practical standpoint and not try to solve the problem it posed by reference to a definition of the family. Seen in that light, article 39 was unlikely to present any major difficulties, despite the fact that it was couched in general terms. The drawbacks which previous speakers had mentioned were not likely to arise in practice, for members of special missions normally travelled without their families. Considerations of good faith and international courtesy should be sufficient to allay fears of inadequate treatment for the families of members of special missions. His delegation could not accept the new French amendment, which would make the operation of article 39 depend on the consent of the receiving State. That State was adequately safeguarded against abuse by the provision in article 11, paragraph 1 (c). The Tunisian amendment was also unacceptable, because it would impose unnecessary restrictions and might cause legal complications; article 39 should be a question of the convenience of special missions and should not concern itself with family relationships. The first part of the Colombian proposal contained a useful idea, but his delegation opposed the second part, for reasons which other delegations had advanced. Bulgaria favoured the International Law Commission's text as it stood, since it represented the best solution to the problem of members of the family.

17. Mr. VRANKEN (Belgium) said that the first part of the Colombian amendment had been criticized for being too harsh, on the ground that the special treatment to which the members of the family were entitled should be accorded for the same length of time as the stay of the member of the mission in the receiving State. He disagreed with that view of the Colombian proposal; the question of the duration of privileges and immunities was governed by article 44 and not by article 39. Belgium would therefore support the first part of the Colombian amendment.

18. Mr. SHAW (Australia) said that, in examining article 39, his delegation had been guided by functional considera-

tions, which it considered the most appropriate means of determining whether privileges and immunities should be granted to the members of the families of representatives in the special mission. That approach had been adopted by the Commission itself, as was implicit in paragraphs (4) and (5) of the general considerations concerning the granting of facilities, privileges and immunities¹ and in the draft preamble to the Convention.² It was essential to establish whether the privileges and immunities granted to the members of the families of representatives were necessary to ensure the efficient performance of the functions of special missions.

19. It must be remembered that special missions were temporary by nature. During the discussion on article 35, it had been pointed out that representatives in special missions would normally be accommodated in hotel rooms. Special missions were normally composed of representatives who were neither very young nor very old and who were unlikely to need other members of their families to assist them. Although representatives might find it pleasant to have other members of their families with them in the receiving State, it was not the purpose of the Convention to afford ordinary human pleasures to representatives and their families.

20. As drafted at present, the article sought to provide for those exceptional cases in which representatives needed the assistance of members of their families, but in doing so, it was open to abuse. If a representative in a special mission forbade a member of his family to accompany him and that member of his family followed him to the receiving State against his will, the member of the family was still entitled to the privileges and immunities conferred by article 39. In other words, the article permitted privileges to be granted, not to representatives in special missions, but to third parties, and in circumstances in which the privileges were not necessary for the efficient performance of the functions of the special mission.

21. In cases where the representative in the special mission was in real need of assistance from members of his family, two courses could be followed: either the sending State should make the member of the family a member of the special mission for the purpose of assisting the original representative in that mission, or the receiving State should regard the case as exceptional and permit privileges and immunities to be extended to the member of the family in question. He therefore supported the French amendment, because privileges and immunities should be accorded to third parties only if there was a specific agreement to that effect.

22. Mr. ALLOTT (United Kingdom) said there seemed to be a widespread feeling in the Committee that, as drafted at present, article 39 was too vague and general to reflect the special nature of special missions. The article might seem to cover anyone who could be described as a member of the family of a representative, wherever that member might be.

23. In order to make the article more precise, three alternative approaches had been suggested. The first was to

¹ See *Official Records of the General Assembly, Twenty-second Session, Supplement No. 9*, pp. 14 and 15.

² *Ibid.*, p. 24.

attempt to define the nature of the family or to impose a numerical limit on the number of accompanying family members. His delegation disagreed with that approach, because it had been found impossible in the past to arrive at a definition of the family which would suit all countries and situations.

24. The second approach was to stipulate that the agreement of the receiving State should be obtained. Normally, special missions stayed in the receiving State for a limited period of time, during which no members of the families of representatives were present. Only in exceptional circumstances was it desirable for members of the family to be present in order to assist the representative in the efficient performance of his duties. In such cases, the sending State and the receiving State should jointly decide which member or members of the family should be present. His delegation supported that approach.

25. The third approach was to insert the words "accompanying the member of the special mission". It was assumed in article 11, paragraph 1 (c) that members of the family did sometimes accompany the representative and the phrase "their family who accompany them" had been expressly used in article 35, paragraph 1 (b). In his opinion, it was also appropriate to include a similar phrase in article 39.

26. Mr. EL HUSSEIN (Sudan) considered that, since the various amendments to article 39 reflected widely differing legal schools of thought, a definition of the family which was favourable to one delegation might not satisfy another. That, presumably, was why the Vienna Conventions on Diplomatic and Consular Relations and the International Law Commission's draft articles on special missions had not attempted to give such a definition.

27. The purpose of the whole Convention was to offer Governments a model of courtesy, which would help to promote friendly relations. Governments should therefore be allowed sufficient flexibility to choose whatever approach suited them best. Regardless of the provisions of the Convention, a State would have every right to extend privileges and immunities to as many people as it deemed fit, no matter how remotely related they were to the members of the mission. Similarly, a State in its sovereignty could deny members of a special mission any privileged status. It would thus be undesirable to regulate by law what should be a matter of courtesy and goodwill. Any restrictive criteria such as those contained in the various amend-

ments submitted might impair the goodwill involved in the sending of special missions; he would therefore vote in favour of the International Law Commission's draft.

28. Mr. MUTUALE (Democratic Republic of the Congo) said that the amendment submitted by the representative of France seemed to run counter to the purposes of the Convention, which was designed to ensure uniform treatment for all special missions. The amendment would make the granting of privileges and immunities dependent on the consent of the receiving State. His delegation could not agree that the text should provide for the granting of consent in individual cases, because the whole purpose of the Convention was to obviate the need for *ad hoc* agreements, even though the Convention might be modified by a general provision such as that contained in article 50. His delegation therefore opposed the French amendment, and the second sentence of the Tunisian amendment, which also made the granting of privileges and immunities subject to the specific authorization of the receiving State.

29. The amendments submitted by the representatives of Colombia and Greece raised problems of interpretation rather than of legal principle, and would seem to imply that members of the family arriving at a later date than the representative in the special mission would not enjoy privileges and immunities. The second part of the Colombian amendment imposed too arbitrary a limit on the number of accompanying family members.

30. He opposed the Tunisian amendment, because he considered that a definition of the family was unnecessary. The absence of an adequate universal definition of the family had proved no hindrance in the past and there was no reason why a generalized concept of the family could not be incorporated into the Convention.

31. Mr. ARBELAËZ (Colombia) said that, on the understanding that the application of article 39 would be based on considerations of courtesy and good faith, his delegation would withdraw the second part of its amendment (A/C.6/L.755). It wished to maintain the first part of the amendment.

32. Mr. SANTISO GALVEZ (Guatemala) said that his delegation of Tunisia and his own delegation had agreed to submit a joint amendment, which would replace their previous amendments (A/C.6/L.754 and A/C.6/L.757).

The meeting rose at 1.10 p.m.