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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)**

*Article 44 (Duration of privileges and immunities)
(continued) (A/C.6/L.761)*

*Article 45 (Property of a member of the special mission or
of a member of his family in the event of death)
(A/C.6/L.688)*

1. The CHAIRMAN recalled that at its 1137th meeting the Committee had decided that when it had concluded the debate on article 45 it would refer articles 44 and 45 and the Belgian amendments thereto (A/C.6/L.761, A/C.6/L.688) to the Drafting Committee without a vote.

2. Mr. SECARIN (Romania) thought that article 45, as proposed by the International Law Commission, fitted perfectly into the rest of the draft Convention; the Commission had rightly decided to adapt article 39 of the Vienna Convention on Diplomatic Relations by dividing it into two articles—one on the duration of privileges and immunities and the other on the property of a member of the special mission or of a member of his family in the event of death—since two essentially different questions were involved. That approach was quite logical and indeed it was nothing new; the same method had been used in articles 51 and 53 of the Vienna Convention on Consular Relations. His delegation therefore favoured the solution adopted by the International Law Commission.

3. He found it difficult to decide whether the Belgian amendments were substantive or drafting changes. The Committee should adopt a flexible approach by approving the substance of articles 44 and 45 and referring them to the Drafting Committee, with instructions to consider the nature of the Belgian amendments.

4. He wished to offer two suggestions to the Drafting Committee. First, the Drafting Committee should clarify the expressions “the members of his family”, used in article 44, paragraph 3, and “a member of his family” in article 45, paragraph 1, by stating which members were meant. It

would perhaps be possible to use the same wording as was used in article 39 or to have a reference to that article, so that articles 44 and 45 could be brought into line with the provision. Secondly, the French version of article 45, paragraph 1, should follow more closely the text of article 39, paragraph 4, of the Vienna Convention on Diplomatic Relations; the phrase “à l'exception de ceux qui auront été acquis dans le pays et qui font l'objet d'une prohibition d'exportation au moment de son décès”, which was used in the Vienna Convention, was preferable to the corresponding phrase in draft article 45, paragraph 1.

5. Mr. SOFIANOPOLOUS (Greece) said that article 44, paragraph 3, and article 45, paragraph 1, reproduced the tenor of article 39, paragraphs 3 and 4, of the Vienna Convention on Diplomatic Relations. He emphasized again that the two provisions were quite different: article 44, paragraph 3, dealt with the question of the duration of privileges and immunities of members of the family of a member of the special mission in the event of his death, while article 45, paragraph 1, was not concerned in any way with privileges and immunities but only with the fate of the property of a member of the special mission or a member of his family in the event of death. His delegation would therefore not be able to support the amendments submitted by Belgium. The words “or of a member of his staff” in the Belgian amendment to article 45 introduced a new element and might therefore give rise to misunderstandings.

6. Mr. SANTISO GALVEZ (Guatemala) recalled the objections to the Belgian amendments he had expressed at the 1137th meeting. As the Greek representative had pointed out, the Belgian amendment to article 45 did not reproduce the exact wording of article 44, paragraph 3, of the International Law Commission's draft, since it added the words “or of a member of his staff”. The addition was unnecessary, since, according to article 1, sub-paragraph (f) of the draft articles, the expression “member of the special mission” included the members of the staff of the special mission.

7. Mr. VRANKEN (Belgium) emphasized that the sole aim of the Belgian amendment was to transfer article 44, paragraph 3, to article 45, without changing the wording in any way. Consequently, all the remarks concerning the so-called “alteration” of the text of article 44, paragraph 3 were irrelevant.

8. Mr. ROMPANI (Uruguay) thought that the problem facing the Committee was not a legal problem but simply a matter of presentation. He reminded the members of the Committee of the suggestion he had made at the 1137th meeting, which would remedy a deficiency in the draft articles.

9. Mr. ARBELAEZ (Colombia) said he hoped that the Drafting Committee would take into account the suggestion made by the representative of Uruguay.

10. The CHAIRMAN pointed out that the Romanian proposal would have the Committee go back on the decision it had taken at the 1137th meeting on the proposal of the representative of Mexico. He therefore invited the Committee to express its views on that subject.

11. Following an exchange of views in which Mr. ROMPANI (Uruguay), Mr. ENGO (Cameroon), Mr. SANTISO GALVEZ (Guatemala), Mr. ARBELAEZ (Colombia) and Mr. FRANCIS (Jamaica) took part, Mr. SECARIN (Romania) said he had not intended to reopen an issue which had already been decided on by the Committee, and would withdraw his proposal.

12. Mr. VANDERPUYE (Ghana) and Mr. ENGO (Cameroon) feared that the Drafting Committee would have a very difficult task, if, as seemed to be the case, it had before it three Belgian amendments—two written and one oral. The Drafting Committee should therefore be given clearer instructions.

13. The CHAIRMAN pointed out that the two written amendments of Belgium were actually one single amendment. Moreover, a number of delegations had expressed the view that all the solutions proposed were acceptable. The Drafting Committee would be able to consider the amendments quite freely but would not take any decision on them, since its task was simply to report to the Sixth Committee.

14. He suggested that, in accordance with the decision taken by the Committee at the 1137th meeting, the International Law Commission's draft of articles 44 and 45 should be referred to the Drafting Committee, the substance of those provisions being regarded as approved, so that the Drafting Committee could consider the amendments submitted by Belgium.

It was so decided.

Article 46 (Right to leave the territory of the receiving State)

15. The CHAIRMAN invited the Committee to consider draft article 46, to which no amendment had been submitted.

16. Mr. SHAW (Australia) said that, in the English text of article 46, the expression "at the earliest possible moment" was not clear and should be replaced by a different expression. As it stood, the text did not indicate the event after the occurrence of which the receiving State must grant facilities to leave "at the earliest possible moment". The text should indicate whether it was the ending of the functions of the special mission, the request of a member of the special mission or some other event which gave rise to the obligation. The point appeared to be a question of drafting, and if that was the case he would like the matter to be referred to the Drafting Committee.

17. Mr. VRANKEN (Belgium) agreed that it was merely a question of form. The French expression "*dans les meil-*

leurs délais" did not correspond exactly to the expression used in the English text and implied, much more clearly than did the latter, that each situation should be considered individually for the purpose of setting the time-limits in question. He suggested that the expression "at the earliest possible moment" should be replaced by the expression "in the shortest possible time".

18. Mr. BARTOS (Expert Consultant) explained that, in the International Law Commission's view, the expression "*dans les meilleurs délais*" meant that the interval referred to should be as short as possible, having regard to the particular circumstances of each case.

19. The provisions of article 44 of the Vienna Convention on Diplomatic Relations and those of article 46 of the draft Convention on Special Missions did not have the same purpose; article 44 of the Vienna Convention provided for the case where, following a declaration of *persona non grata* or the termination of the functions of a permanent diplomatic mission or a member of such a mission, a person enjoying the privileges and immunities provided for was obliged to leave the territory of the receiving State; draft article 46, on the other hand, dealt with the right of persons enjoying privileges and immunities to leave the territory of the receiving State. That article was thus based both on the theory of functional exigency which would require the receiving State to grant members of special missions the privileges and immunities to which they were entitled until such time as they were able to leave its territory, and on the concept of personal inviolability, from which the guarantee of the right to leave the territory of the receiving State derived.

20. Mr. JAHODA (Czechoslovakia) said that he supported article 46 as drafted by the International Law Commission. He thought, however, that the title of the article did not accurately reflect the content, since the question of the archives of the special mission, which was dealt with in paragraph 2, was not mentioned in the heading. He suggested that the matter should be considered by the Drafting Committee.

21. Mr. OGUNDERE (Nigeria) said that article 46 was acceptable in substance, because it guaranteed not only the freedom but also the inviolability of persons enjoying privileges and immunities until they left the territory of the receiving State. He thought, however, that it would be preferable, in article 46, paragraph 1, to replace the expression "at the earliest possible moment" by the words "at any time they wished to do so", because a member of a special mission might need to leave the territory of the receiving State before his functions had come to an end.

22. Mr. SANTISO GALVEZ (Guatemala) said that, as he understood the Spanish text of article 46, the expression "at the earliest possible moment" meant as soon as possible after the outbreak of armed conflict. Thus, the sending State would have the right to choose the time when its special mission would leave the territory of the receiving State, but the provisions of article 46 would come into effect upon the outbreak of hostilities.

23. Mr. POTOLOT (Central African Republic) said that his delegation supported the wording of article 46 and

thought it would perhaps be advisable for the Committee to take a decision at the present stage on the question whether it should refer the article to the Drafting Committee or continue the debate on it in plenary session.

24. The CHAIRMAN said that the Australian representative could either transmit his suggestions to the English-speaking members of the Drafting Committee or submit to it, through the Chairman, any proposal he saw fit.

25. Mr. YASSEEN (Iraq), Chairman of the Drafting Committee, said that the Drafting Committee took into account all the relevant comments made in plenary session and that, in accordance with the practice established at the Vienna Conference, delegations could also transmit their suggestions to it, even if they had not been made in plenary session.

26. The CHAIRMAN said that, if there were no objections, he would take it that the Committee approved article 46 as drafted by the International Law Commission.

Article 46 was approved and referred to the Drafting Committee.

Article 47 (Consequences of the cessation of the functions of the special mission)

27. The CHAIRMAN invited the Committee to consider draft article 47. No amendment to it had been submitted.

28. Mr. ROMPANI (Uruguay) said that the omission in article 47, paragraph 2, of a reference to the premises of the special mission was a matter of grave concern to his delegation. Accordingly, if it had been able to do so within the time allotted, it would have submitted an amendment to article 47 to insert in paragraph 2 the following sentence: "The receiving State shall respect and protect the premises of the special mission for a reasonable period of time to be agreed upon."

29. In paragraph 2 of the article, the words "and if the functions of the special mission have come to an end" seemed to make the exercise of the right accorded to the sending State by that provision subject to a supplementary condition. He wondered what exactly had been the Commission's intention in drafting the article in that way.

30. Mr. BARTOS (Expert Consultant) said that the functioning of special missions was not interrupted by the outbreak of hostilities between the receiving State and the sending State nor by the absence or breach of diplomatic relations between those States. Indeed, special missions were often used, in the case of war between two States, to settle certain problems, and it was also through special missions that preliminary contacts were made between two States that were on the point of establishing diplomatic relations. The case envisaged in article 47, paragraph 2, was thus important, because it afforded particular protection to special missions in a situation where the provisions of article 45 of the Vienna Convention on Diplomatic Relations would not apply, since the sending State had no permanent diplomatic mission or consular posts in the receiving State. The comment made by the representative of Uruguay thus merited careful consideration.

31. Mr. CAPOTORTI (Italy) said that article 47, paragraph 2, provided for two hypothetical situations: the absence or breach of diplomatic or consular relations between the sending State and the receiving State and the cessation of the functions of the special mission. Articles 7 and 20 of the draft Convention provided, respectively, that the existence of diplomatic or consular relations was not necessary for the sending or reception of a special mission and that the severance of such relations between the sending State and the receiving State would not of itself have the effect of terminating special missions existing at the time of such severance; in those circumstances, the provisions of article 47 would apply only if the functions of the special mission had also been terminated or if it had completed its tasks. Article 47, paragraph 1, on the other hand, provided for the case where, independently of the absence or breach of diplomatic or consular relations between the sending State and the receiving State, the functions of a special mission came to an end.

32. Consequently, the only possibility not provided for in article 47 was that the sending State might wish to entrust the custody of the premises of its special mission to a third State in the circumstances specified in paragraph 2 of the article. However, he did not think that the problem of premises was as important for a special mission as for a permanent diplomatic mission; it might therefore not be essential to provide for their protection in the Convention.

33. Mr. BARTOS (Expert Consultant) recalled the temporary nature of special missions. A special mission did not reappear once its functions had ceased, whereas the premises of a permanent diplomatic mission, which were closed in the event of a breach of diplomatic or consular relations between the sending State and the receiving State, could subsequently be reopened. Those premises therefore remained at the disposal of the sending State.

34. It had been suggested that the draft Convention should stipulate a period at the end of which the receiving State would be released from its obligation to safeguard the property and archives of special missions if the sending State did not withdraw them within a reasonable time or, in the event of absence or breach of diplomatic or consular relations, did not entrust their custody to a third State. In that way, the receiving State need not be bound for too long to safeguard the property of a special mission whose functions had ceased. He realized that the International Law Commission had been somewhat brief in article 47 and had not fully reproduced the corresponding provision of the Vienna Convention on Diplomatic Relations.

35. Mr. SILVEIRA (Venezuela) found the comments of the Uruguayan representative interesting and regretted that Uruguay had been unable to submit an amendment covering the point. He therefore thought that article 47 should be referred to the Drafting Committee with a request that those comments should be taken into consideration.

36. The CHAIRMAN said that, if there were no objections, he would assume that the Committee approved article 47 and referred it to the Drafting Committee with a request that it should consider the comments of the Uruguayan representative.

It was so decided.

Article 48 (Obligation to respect the laws and regulations of the receiving State)

37. The CHAIRMAN said that no amendments to article 48 had been submitted. If there was no objection, he would assume that the Committee approved the article as drafted by the International Law Commission.

Article 48 was approved and referred to the Drafting Committee.

Article 49 (Professional activity)

38. The CHAIRMAN said that no amendment had been submitted in respect of article 49. In the absence of any objections, he would assume that the Committee approved the article as drafted by the International Law Commission.

Article 49 was approved and referred to the Drafting Committee.

Article 50 (Non-discrimination)

39. The CHAIRMAN invited the Committee to consider article 50. He said that no amendment to the article had been submitted.

40. Mr. ROSENSTOCK (United States of America) said that he approved of article 50 as it stood, because it stated that no discrimination should be made as between States in the application of the provisions of the Convention.

41. Mr. ROMPANI (Uruguay) pointed out that, since the receiving State could apply the restrictions enumerated in paragraphs 2 (a), (b) and (c) of article 50, third States, which were required under article 43, paragraph 3, to accord to official correspondence and other official communications in transit the same freedom and protection as was accorded by the receiving State, would have to know of all the agreements in existence on the subject between all States throughout the world. That presented an insurmountable practical difficulty. Viewed within the context of article 50, the provision in article 43, paragraph 3, could be an obstacle to the ratification of the future Convention.

42. Mr. CAPOTORTI (Italy) said that the Vienna Conventions on Diplomatic and Consular Relations contained a rule similar to that in article 43, paragraph 3. The problem to which the Uruguayan representative had referred would

doubtless be solved, since article 43, paragraph 3, would specify that the protection which the receiving State was required to afford was that provided for in the Convention on Special Missions. That reference to the régime established by the Convention itself disposed of any problems which could arise from the existence of special agreements between States.

43. He drew the Committee's attention to article 50, paragraph 2 (c), which did not appear in the Vienna Convention on Consular Relations. The latter, while establishing that States could conclude derogatory agreements, had set certain limits in that respect. Article 50, paragraph 2 (c'), however, did not appear to impose any limits, and he was concerned over the fact that it entitled States to derogate from the provisions of the Convention to the extent they saw fit. That could lead to a proliferation of different systems.

44. Mr. ROMPANI (Uruguay) said that he was not convinced by the Italian representative's explanation. The scope of article 50 was so wide that transit States could face insuperable problems. He would like to know the Expert Consultant's opinion on the subject.

45. Mr. BARTOS (Expert Consultant) said that the issue raised by the Italian representative had weighty implications. That representative was suggesting that article 50, paragraph 2 (c), could invalidate the whole system of privileges and immunities established by the Convention. The International Law Commission had thought it appropriate first to devise a system and then allow States, through bilateral or regional agreements, to reduce the privileges and immunities for which the system provided. It had considered three possibilities in that connexion: the retention of the rule stated in sub-paragraph (c), the restriction of the paragraph to the rules stated in sub-paragraphs (a) and (b), or the limitation of the scope of the rule in sub-paragraph (c) by the enumeration of certain privileges and immunities, accompanied by the stipulation that they were not susceptible of any derogation. After an unsuccessful attempt to draw up a list of provisions which could be derogated from, the International Law Commission had finally adopted the present wording of article 50. The question whether a limitation should now be placed on the limitation provided for in paragraph 2 (c) was so important that the Sixth Committee should reflect on it.

The meeting rose at 6.10 p.m.