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CONTENTS

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.747, A/C.6/L.773)

Final clauses (continued)

1. Mr. MOSCARDO DE SOUZA (Brazil) said he would comment only on the draft submitted by Ghana and India (A/C.6/L.773, annex, draft III). He saw no need to single out the parties to the Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water and the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, for the purposes of the signature of or accession to the future Convention on Special Missions. That matter could be settled more reasonably by direct decision of the General Assembly in the form of invitations to States which were not States Members of the United Nations, the specialized agencies or the International Atomic Energy Agency or Parties to the Statute of the International Court of Justice to become parties to the Convention. Nor was there any reason for the Convention to be open for signature at the Ministry for Foreign Affairs of the Soviet Union or the Department of State of the United States of America, or for a category of initial depositaries which happened to be the super-Powers. The logical procedure would be for the Convention to be open for signature at United Nations Headquarters and for the Secretary-General of the United Nations to be its depositary. It might be asked in that connexion why the super-Powers, which already enjoyed special treatment in the matter of security, should play such a role in the legal field. Law was a sphere in which the concept of the distinction between powerful adult nations and less powerful younger nations should not apply. Yet that seemed to be the assumption underlying the treaties mentioned in the draft submitted by Ghana and India.

2. Mr. LIANG (China) said that he did not wish to consider the question of the principle of universality from the moral angle, because he thought it lay beyond the realm of ideological rivalry. In that connexion, he drew attention to the statement made at the 1798th plenary meeting of the General Assembly by the Chinese representative, who had contested the assertion of the proponents of that principle that it was a cardinal principle of the Charter and had said that the Charter spoke nowhere of universality but established the principle of selectivity, as Articles 4, 5 and 6 testified. But although the Charter did not mention the principle of universality, the principle had certainly assumed great importance since the 1950s owing to the admission of many newly independent States to membership of the Organization. However, their admission had always taken place in the context of Article 4 of the Charter. As far as participation in treaties was concerned, that too should be permitted only within the framework of contemporary international law. But, unlike some representatives, he did not think that contemporary international law sanctioned the principle of universality. In accordance with the classic definition given in article 2 of the Vienna Convention on the Law of Treaties, a treaty was an international agreement concluded between States; a State could not impose on another State its "right" to participate in any agreement whatever. An attempt to do so had been made at Vienna but it had failed. The Vienna Conventions had confirmed that the establishment of relations between States was subject to their consent. It had been contended that, between States, absolute fundamental rights existed which at all times belonged to every State in its relations with other States. But what were those rights? Even legal theory was divided about their content. Admittedly, it had been said at Vienna and in the International Law Commission that the right of every State to participate in multilateral treaties was a principle of *jus cogens*, but in his opinion that was an *a priori* assumption which had not yet been demonstrated.

3. Mr. SECARIN (Romania) stressed the importance his delegation attached to the right of every State to participate in a multilateral treaty dealing with the codification and progressive development of international law, as well as in any other treaty of universal application. In view of the role of the United Nations in the development of friendly relations and co-operation among States, all countries should be represented in it, should participate in the legal work accomplished under its auspices and should benefit from that work.

4. As various delegations, including his own, had pointed out at the United Nations Conference on the Law of Treaties, there was a particular category of international agreements which should be open to all States because they were intended, by their object and purpose, to promote the fundamental principles of international law and strengthen peace and security in the world. Agreements in that category were governed by the principle of universality, which was recognized by legal theory and universal conventions from the end of the nineteenth century onwards which contained clauses entitling every State to accede to them.

5. Some went so far as to contest the existence of that principle. Yet the realities of international life demanded that it should be recognized and respected if the ideals of progress and well-being for all mankind were to be realized.

6. Treaties dealing with the codification and progressive development of international law should obviously exemplify the principle of universality and be open to all States, since the fundamental principles of friendly relations and international co-operation, which it was the purpose of law-making treaties to promote, concerned all States. That was why, for example, a number of formulas adopted by consensus by the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States used the expression "all States". It appeared, in particular, in the enunciation of the principle of sovereign equality of States[1] and in those of the principle of the peaceful settlement of disputes[2] and the principle prohibiting the threat or use of force (see A/7619, para. 117). How then could States fulfil the obligations incumbent on them under principles and rules of international law which were codified in conventions unless they were parties to those conventions? How could they contribute to the promotion of principles applying to them if they were refused access to the conventional instruments drawn up for that purpose? But that was the position with the conventions codifying international law in which the restrictive and discriminatory accession formula used by the United Nations Conference on Diplomatic Intercourse and Immunities had been imposed, contrary to the spirit and letter of the Charter. That formula conflicted with the aims of international co-operation and with the principle of universality. The principle concerned all States indiscriminately, whereas the so-called Vienna formula allowed only specified States to participate in legal instruments of international co-operation. The principle of the universality of certain multilateral treaties had nevertheless been recognized recently by the United Nations Conference on the Law of Treaties, which had adopted a Declaration on the subject (see A/7592, explanatory memorandum, para. 5).

7. The Convention on Special Missions, as a multilateral treaty dealing with the codification and progressive development of international law, should therefore be open to universal participation, i.e. to participation by all States. That was particularly appropriate, as it constituted the code for special missions, at present the most widespread and vigorous form of *ad hoc* diplomacy.

8. His delegation therefore considered that the formula which best met the political and legal requirements that flowed from the purposes and principles of the Charter was the one which entitled all States to sign and accede to the Convention on Special Missions. It consequently supported the draft final clauses proposed by the Soviet Union delegation (A/C.6/L.773, annex, draft I) and opposed those submitted by France, the United Kingdom and the United States of America (*ibid.*, draft II). It also favoured the draft proposed jointly by Ghana and India, which partly took the principle of universality into account.

9. Mr. ENGO (Cameroon) said that encouragement should be given to all States wishing to bind themselves by treaties and conventions, for that was bound to strengthen the role of law in the international community. International law should have general application in all cases where the subject-matter concerned the international community as a whole.

10. His delegation recognized that some delegations had difficulties regarding the draft final clauses submitted by the Soviet Union, but it regretted that those delegations had not explained clearly the reasons for their opposition to that formula. However, since caution was essential in that area, it preferred a compromise solution that struck a middle course between the Soviet draft and the draft submitted by France, the United Kingdom and the United States. Consequently, even though it supported the principle of universality, his delegation would be unable to vote in favour of the Soviet text. If that text was put to the vote it would abstain. Nor would it support the draft submitted by France, the United Kingdom and the United States, which in its view was incompatible with the trend established by the Conventions mentioned by previous speakers. The principle of universality could not be accepted in some instruments and rejected in others, and in that regard he shared the views expressed at the 1149th meeting by the Nigerian representative. Bearing in mind all the issues involved, his delegation supported the text submitted by Ghana and India, which represented a reasonable compromise and took due account of practice and precedent. In conclusion, he stressed that, as a non-aligned country, Cameroon had no interest in the ideological differences of opposing blocs but sought the establishment of conditions which could ensure peace in the world.

11. Mr. EL-ATTRASH (Syria) recalled that during the previous two weeks the General Assembly had discussed the principle of universality at length in the debate on the question of the restoration of the lawful rights of the People's Republic of China in the United Nations (agenda item 101). In that debate, a number of eminent jurists had maintained the view that China's seat should be occupied by the People's Republic of China, basing their arguments on the Charter, on general international law, logic, and above all on the actual situation, which made it absolutely inadmissible that a quarter of the world's population should be excluded from an organization of universal scope. Once again, the lawful rights of the People's Republic of China had been flouted because the United States had irrevocably condemned that country to remain outside the United Nations, in defiance of international law and of logic.

12. That debate had centred on the principle of universality, a principle enshrined in the Charter and one that his delegation had always resolutely defended and would defend again in the Sixth Committee in connexion with the draft Convention on Special Missions. It had, moreover, reason to hope that its voice would be heard more readily than in the General Assembly, since the Sixth Committee was essentially a technical body and much less sensitive than the General Assembly to considerations of a political nature. It had emerged from the current debate that the Vienna formula, as reproduced in the draft final clauses submitted by France, the United Kingdom and the United States, was quite obviously designed to bar from the

1 See *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 87, document A/6230, para. 403.

2 *Ibid.*, para. 248.

international community a specific group of States with which Syria, as well as many other States Members of the United Nations, maintained close relations of friendship and co-operation. Some delegations had even asserted that the accession of a certain State to the future Convention on Special Missions would be highly undesirable and would in fact constitute a threat to European security. As everyone undoubtedly realized, the State in question was the German Democratic Republic, which maintained trade and technical relations and, in some cases, diplomatic relations with many States Members of the United Nations. He wondered on what basis that country was denied the right to participate in a Convention intended for signature by all States without discrimination. The same question arose with regard to the People's Republic of China, the Democratic People's Republic of Korea and the Democratic Republic of Viet-Nam.

13. In the light of the foregoing considerations, his delegation supported the draft final clauses submitted by the Soviet Union, which fully respected the principle of universality. If that draft was not accepted by the Committee, his delegation would vote in favour of the draft submitted by Ghana and India, which offered a compromise solution, although it did not achieve the end sought, namely, full respect for the principle of universality.

14. Mr. PINTO (Ceylon) said his Government had always believed that every State had the right to participate in multilateral treaties which formed a part of the codification and progressive development of general international law or whose subject-matter and purpose concerned the international community as a whole. His delegation believed that the future Convention on Special Missions came into the category of what might be termed "general multilateral treaties" and that all States should therefore be invited to become parties to it. It was essential that all States should have the opportunity to contribute to the drafting of that category of treaties or, at least, to participate in the final instruments. That principle had its roots in the very nature of international law, which States respected because it was their common wish to do so and also because it was their duty, in the interest of international order. In view of the special character of international law, it therefore seemed both reasonable and necessary that the entire international community should seek to ensure the widest possible acceptance of norms of general international law by opening general multilateral treaties to participation by all States and even encouraging all States to participate in them.

15. On the basis of those considerations, his delegation supported the draft final clauses submitted by the Soviet Union. While it had considerable sympathy for the draft submitted by Ghana and India, it felt that the text might raise certain difficulties of a technical nature, since it made participation in an international agreement unrelated to the draft Convention on Special Missions an essential condition for participation therein. In spite of that reservation, his delegation would not vote against the draft final clauses submitted by Ghana and India. In his delegation's view, the issue of whether or not a provision authorizing participation by "all States" should be included in the future Convention on Special Missions was totally unrelated to the question of the recognition of States or Governments. His delegation would be the first to affirm that participation by a State in a general multilateral treaty together with an entity that it did not regard as a State could not constitute an act of recognition of that entity, whether or not the State in question made an express statement to that effect in its instrument of accession. He stressed in conclusion that his delegation's support for the formula proposed by the Soviet Union was based solely on juridical considerations.

16. Mr. KLAFKOWSKI (Poland) said that his delegation's attitude to the question of participation in multilateral conventions was well known. However, he wished to recall the reasons why Poland favoured the "all States" formula. First, all States were linked by a universal and consequently unique system of international relations. Secondly, contemporary international law could generally be expressed only through the medium of conventions based on the common will of the participating States. Consequently, the progressive development of international law depended on the right of all States to participate in the process of formulation. Thirdly, if the rules of international law were to be applied universally, there was an obvious need for universal participation in multilateral treaties. All States had the right to participate in universal conventions, regardless of disputes that had divided the international community. In that context, he endorsed the arguments advanced by the Indian representative against restrictive clauses in multilateral treaties. Fourthly, the question of universal participation in multilateral treaties should be examined in the light of the Charter. The purposes and principles of the Charter were, in fact, obligatory for all States and not merely for States Members of the United Nations. Only thus could the Charter guarantee the unity of the universal international legal system. The Charter contained no provision to the effect that only Member States could accede to conventions concluded under the auspices of the United Nations. Consequently, the right to participate in the implementation of such conventions could not be withheld from any State. In that connexion, at the 1149th meeting the representative of Iraq had rightly drawn attention to all the consequences of the exclusion of the universal participation clause for the codification of international law by United Nations bodies. Fifthly, account should be taken of the benefits which could accrue to the international community from the Convention on Special Missions. In the view of his delegation, the draft Convention should be a corner-stone of relations between all States, and that called for the inclusion of the universal participation clause. The draft final clauses submitted by France, the United Kingdom and the United States, which restricted participation in the Convention, were manifestly discriminatory and consequently conflicted with a provision of the Convention itself, namely article 50 prohibiting discrimination as between States in the application of the Convention. Sixthly, a distinction should be drawn between the universal participation clause and the Vienna formula, which took account of the political factor of the recognition of States. There were already a large number of multilateral treaties in which States that did not recognize each other participated, and legal formulas had been worked out which enabled the question of participation to be settled in accordance with the "all States" formula. Finally, the inclusion of the universal participation clause had the advantage of provid-

ing a simple solution to the question of the depositaries of the Convention. His delegation could support the draft final clauses submitted by the Soviet Union and by Ghana and India.

17. Mr. HYERA (United Republic of Tanzania) said that his delegation had already had the opportunity, at the United Nations Conference on the Law of Treaties, to state its position on the matter under discussion. There was no doubt that the principle of universality applied to general multilateral treaties. The argument that the concept of a State was not yet precisely enough defined to make it possible to allow any political entity that so wished to become a party to the future Convention on Special Missions was without foundation. It was difficult to see why the delegations that had decided to advance that argument in the case of the draft Convention had not considered it relevant in the case of the four major Treaties referred to by several earlier speakers. Even if certain entities which claimed the right to statehood were not recognized as States, the fact remained that there were some States, universally recognized as such, which were not Members of the United Nations or of a specialized agency or Parties to the Statute of the International Court of Justice. That fact was implicitly confirmed in the Vienna formula, which, when interpreted in conformity with the principle of universality, merely meant that there was no need for the States concerned to be invited by the General Assembly to become parties to the Convention.

18. The fact that an illegal régime, such as that of Southern Rhodesia, aspired to statehood should not cause the rejection of the principle of universality any more than the argument that that principle might again raise the issue, in Europe, of the legal status of a certain political entity and thus create new difficulties between the major Powers. His delegation had no intention of becoming involved in a dispute that primarily concerned Europe, but it objected to a purely regional dispute being advanced during a general debate as a reason for the rejection of a general principle. The fact that the application of the principle ran counter to the interests of certain major Powers was not a valid legal argument. His delegation wished to protest against the methods used by some delegations to ensure that their views should prevail and in particular against their threats to boycott the draft Convention. No State was bound to become a party to the Convention, and threats of that sort could be interpreted only as a deliberate attempt to influence the course of the Committee's debates for the sake of furthering certain interests. The principle of universality should be recognized by all, and the difficulties it might cause for some States were no justification for their attitude to it.

19. With regard to the three draft sets of final clauses before the Committee, his delegation considered that the Vienna formula, which France, the United Kingdom and the United States proposed to follow, was too restrictive, not to say discriminatory; it would vote against the three-Power draft. The draft submitted by Ghana and India, although leaning towards the principle of universality, would not be able to ensure its full implementation. His delegation thought that the USSR proposal was the best solution to the problem, and would therefore vote for it.

20. Mr. ZAVOROTKO (Ukrainian Soviet Socialist Republic) was gratified to note that the debate on the draft Convention on Special Missions had focused attention on the importance for the international community of the principle of universality and on the need to make unabated efforts to ensure the application of the principle to all general multilateral treaties and its acceptance as a principle of positive international law. His delegation considered that the Committee should make it possible for all States which so wished to become parties to the Convention. It had certainly not been convinced by the arguments of some delegations that the principle of universality would jeopardize good relations between peoples and that the participation of certain States in the Convention would impair its effectiveness. A number of States had always been opposed to any proclamation of the principle of universality. Yet it was undeniable that the question of special missions called for the application of a universal formula.

21. The question of recognition did not really arise in that context, since the fact that one State was a party to a convention did not *ipso facto* imply its recognition by the other signatory States. Indeed, between the two world wars a large number of multilateral treaties had been signed both by the USSR and by a number of other States, some of which had not recognized the USSR.

22. His delegation regarded the draft submitted by Ghana and India as a praiseworthy attempt at compromise between the other two drafts, which were diametrically opposed to each other. However, the USSR draft, being closest to the principle of universality, was the most acceptable, and his delegation would vote for it.

23. Mr. EL-ARABY (United Arab Republic) pointed out that the draft Convention on Special Missions was a text of a technical nature which dealt with one of the most important aspects of bilateral diplomacy. Its effectiveness would be diminished if some States were refused the right to become parties to it. That view was in keeping with the United Arab Republic's invariable attitude towards the participation of States in general multilateral treaties, which, in virtue of the principle of universality, should be open to all States whether or not Members of the United Nations or members of the specialized agencies, or Parties to the Statute of the International Court of Justice.

24. His delegation would therefore vote in favour of the draft final clauses submitted by the USSR and, in the event of their not being adopted, it would support the draft of Ghana and India, the philosophy of which was equally sound.

The meeting rose at 12.55 p.m.