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

*Final clauses (continued)*

1. Mr. ARANGIO-RUIZ (Italy) said that the task of the Committee was not to discuss questions of political or moral principle but to endeavour in a spirit of co-operation to complete the draft Convention on Special Missions as soon as possible, bearing in mind that it was desirable to ensure the fullest possible practical application. The principle of universality was a controversial subject in international law, and even if it were generally valid in all cases its application in the present context would have to be sought in the light of other equally valid principles, such as that of the sovereign equality of States, that of equal rights and self-determination of peoples, and the other principles embodied in the United Nations Charter.

2. Turning to the three sets of draft final clauses contained in document A/C.6/L.773, he pointed out that the USSR draft would open the Convention to entities whose status in international law was questioned by a number of States. There was thus a risk that the ratification of the Convention by such entities would not be recognized as a source of rights and obligations by certain States, and that would entail a reduction of the universal scope of the Convention itself. The USSR draft also raised questions of a political order whose solution should not be sought within the present context. It also disregarded the traditional role of the Secretary-General as the depositary of multilateral international conventions. For all those reasons his delegation could not vote in favour of the Soviet text.

3. The draft submitted by Ghana and India had all the faults of the USSR text without its clarity. It referred to entities identifiable as States by criteria traditionally acceptable to the United Nations and to States and also to entities identifiable by criteria that were completely different. Although it had been argued that the latter were the result of agreements between certain of the permanent members of the Security Council, his delegation felt that

they entailed political elements and could not be appropriately included in the draft Convention. The draft submitted by Ghana and India, far from enhancing the universality of the future Convention, raised a controversial issue that could not properly be dealt with by the Sixth Committee. Accordingly, his delegation could not support it.

4. His delegation would vote in favour of the three-Power draft, article A of which reproduced the wording of the Vienna Conventions on Diplomatic and Consular Relations, and fully respected the principle of universality. The recent Declaration on Universal Participation in the Vienna Convention on the Law of Treaties (see A/7592, explanatory memorandum, para. 5) had rightly taken that formula as a basis; and the fact that the General Assembly was in a position to invite any State to become a party to the Convention made it possible to meet any new development in the international situation.

5. Mr. KOSTOV (Bulgaria) said that the issue at stake was the principle of universality, which derived from the principle of the sovereign equality of States. In accordance with that principle, every State had the right to participate in all treaties bearing on questions of general interest. Unless the principle was respected, it would be impossible to realize fully the aims of multilateral treaties relating to the codification and progressive development of international law and treaties whose purpose and subject-matter concerned the international community as a whole. The question of universality arose also in connexion with membership of the United Nations and other international organizations and participation in international conferences dealing with questions of common interest. The general question of universality in international life had become a major problem because of the policy of discrimination followed by a well-known group of capitalist States which persisted in denying or ignoring the existence of the Democratic Republic of Germany.

6. The three-Power draft, which reproduced the notorious discriminatory Vienna formula and would bar certain States from becoming parties to the Convention, represented one of the last vestiges of the cold war. The Vienna formula had been devised for the purpose of serving the strictly political interests of a certain group of States and was clearly biased against the socialist countries. But the discrimination it imposed was damaging also to the majority of the countries of the world, and in particular the newly independent States, because it called in question the right of all States to participate in international life and undermined the principle of international co-operation laid down in Articles 1 and 55 of the Charter. International treaties were one of the most important ways of achieving international co-operation, and respect for the principle of universal

participation would help to ensure that, as laid down in Article 2, paragraph 6, of the Charter, States which were not Members of the United Nations should act in accordance with the principles of the Charter so far as might be necessary for the maintenance of international peace and security.

7. The principle of non-discrimination was laid down in article 50 of the draft Convention, and it would be illogical to state that principle and then to include a formula that constituted a clear derogation from it.

8. It had often been argued, when international treaties were being drafted, that the "all States" formula introduced a political factor into what should be a purely juridical discussion. On the contrary, it was the Vienna formula that was based on purely political criteria bearing no relation to the principles and norms of international law; and the so-called legal arguments in support of that formula were all based on purely political motives, namely, the refusal of certain States to recognize other States whose political régime was unacceptable to them. Yet the recognition of States and the participation of States in the international legal order were two separate matters, the scope of the latter being far wider. Moreover, article 7 of the draft Convention on Special Missions stated that the existence of diplomatic or consular relations was not necessary for the sending or reception of a special mission, and that provision would lose most of its force if the Convention was not open to all States.

9. Furthermore, as had been rightly pointed out, a whole series of international treaties existed based on the principle of universal participation, and others were in preparation. That represented an irrevocable trend, and it was paradoxical that there should exist, side by side, two different categories of treaties, the ones open to all States and the others excluding certain States. That situation could not continue without giving rise to considerable confusion. On the political plane too, there were changes that jurists must take into account, for otherwise they would find themselves outside the main current of historic progress.

10. While he greatly appreciated the efforts of the Ghanaian and Indian delegations to arrive at a compromise formula, for the reasons of principle he had explained he preferred the USSR text. If that text was not approved, he would vote in favour of the Ghanaian and Indian formula and against the three-Power draft.

11. Mr. TRAORE (Ivory Coast) said that, while his delegation was not opposed to the principle of universality in the context of conventions establishing rules valid for the international community as a whole, it objected to the emerging tendency to invoke that principle for invalid purposes, namely, the solution of political issues. Certain delegations wanted the Sixth Committee to endorse the principle of universality in the present case in order that an entity whose status in international law was questionable could enter the international community on an equal footing with sovereign States. Such matters did not lie within the competence of the Sixth Committee.

12. Of the three sets of draft final clauses under discussion, his delegation preferred the three-Power draft, which

was based on the Vienna formula and accorded with United Nations practice. The criteria for participation which it laid down were entirely appropriate for inclusion in a convention concluded under United Nations auspices. Its text was not discriminatory, since it would open the Convention to all members of the international community, to the exclusion of entities whose status was questionable. It had been argued that certain recent treaties had used a different formula. That did not, however, create a valid precedent, because the treaties in question dealt with special topics. As the Panamanian representative had pointed out (1148th meeting), entities excluded by the three-Power formula could always enter into bilateral agreements based on the Convention on Special Missions.

13. His delegation would vote in favour of the three-Power draft and against the other two texts. The draft submitted by Ghana and India was not a compromise text but merely a variation on the USSR draft.

14. Mr. KHASHBAT (Mongolia) said that, of the three drafts, that of the USSR was most in keeping with the aims and requirements of the Convention on Special Missions as stated in the draft preamble prepared by the International Law Commission (A/6709/Rev.1 and Corr.1, chapter II, p. 24). The theory that the draft Convention should be open for accession by all States was further borne out by article 7 and the Commission's commentary thereon. Almost every State in the world had at some time used the institution of special missions for the performance of tasks of a temporary nature, and no single group of States could arbitrarily exclude others from participation in multilateral international treaties, especially in the case of a convention such as the present one which dealt with matters of concern to all States. Any attempt to impose the obsolete and discriminatory Vienna formula created during the years of the cold war would be contrary to the spirit and the letter of the draft Convention and would be against the interests of the codification and progressive development of international law.

15. The question of participation should not be decided on the basis of abstract considerations. The provisions regarding participation should be such as would ensure the practical fulfilment of the purposes of a convention which must accord with the facts of modern international life. There were a number of States that were not covered by the Vienna formula but whose participation in the present draft Convention was justified by the principle of the sovereign equality of States; they should be enabled to contribute fully to the development of friendly relations and co-operation among States. A number of recent important international instruments, such as those referred to in the draft submitted by Ghana and India, provided for participation by all States. The Committee should take the opportunity to strengthen that emerging trend. The draft submitted by Ghana and India represented a step forward and his delegation was favourably disposed towards it, because if it were adopted a large number of States could become parties to the Convention.

16. Mr. DELEAU (France) said that his delegation had co-sponsored the draft based on the formula employed in the Vienna Conventions on Diplomatic and Consular Relations because it had felt that the text of the third in

the series of conventions governing the conduct of inter-State relations should conform to that of its two predecessors. With regard to the argument that the Vienna formula had become obsolete, he recalled that it had been adopted by an overwhelming majority for incorporation in the recent Vienna Convention on the Law of Treaties. His delegation could not support either of the two other drafts submitted. The Ghanaian and Indian draft, with its reference to specific treaties, created somewhat curious qualifications for participation in the draft Convention on Special Missions. He also questioned its departure from the regular practice of designating the Secretary-General of the United Nations as the depositary for international treaties concluded under United Nations auspices. In his view, their text failed to meet the real needs of the situation.

17. Mr. AMRANI (Algeria) said that the participation of all States in the Convention on Special Missions would not be a threat to peace and security, as had been suggested, but the arbitrary isolation of certain countries certainly could threaten world peace. That belief was borne out by the fact that those who were now attempting to exclude some States from the draft Convention had readily accepted universal participation for treaties they regarded as being particularly important. It was illogical for any State to espouse the principle of universality while preventing others from participating in multilateral treaties of a universal nature which dealt with objective norms of international law and were intended to govern relations between States, including those between Members of the United Nations and non-member States.

18. His delegation could not agree to the arbitrary exclusion of certain States on the grounds that they were not Members of the United Nations and, in the interests of better understanding among peoples, it would vote for the draft final clauses which provided for universal participation.

19. Mr. ROMPANI (Uruguay), comparing the three drafts before the Committee, said that, while it agreed that universality was a condition for the codification and unification of international law, his delegation would support the draft which followed most closely the text of the Vienna Convention on Diplomatic Relations.

20. Article 4 of the Charter did not provide that any State could become a Member of the United Nations merely because it existed or claimed to exist as a State, and other Articles, as well as some of the rules of procedure of the General Assembly, recognized the existence of States which were not Members of the United Nations. The question as to which States should be able to participate in the draft Convention was therefore a political rather than a legal matter and should be dealt with by the Security Council, the General Assembly, or the First Committee.

21. Uruguay had made its position known with regard to non-member States such as the People's Republic of China, and had entered into a trade agreement with the Democratic Republic of Germany. But that was no reason for including in the draft Convention provisions which differed from those of the other Conventions in the series. Consequently, his delegation would not vote for the draft submitted by Ghana and India, although it respected the

reasons behind it. Uruguay's policy would continue to be to accept the results of the labours of the Vienna Conferences and the International Law Commission, and to pursue the specific purposes of the Committee.

22. Mr. TARASOV (Union of Soviet Socialist Republics) said that the Committee now had to decide whether the draft Convention on Special Missions was to be general and universal or merely an instrument of diplomatic law for the benefit of a limited group of countries. The decision was extremely important because of its effect on other treaties and conventions and on the progressive development of international law.

23. There were many arguments in favour of the USSR draft as compared with that of the three Powers. His delegation's draft provided for participation in the Convention by all States, which had the advantage of including some with great influence on international affairs, even though they were not Members of the United Nations. The three-Power draft, on the other hand, divided the world into States which would be allowed to sign the Convention and those which would not, and erected barriers between the two groups. Such a proposal was clearly anachronistic and would hinder international co-operation.

24. The Soviet Union, like the other founder Members of the United Nations, had intended it to be a universal, international body to which all countries and peoples could belong, and that intention had been enshrined in the Charter. Having actively promoted the draft Convention, his delegation could not accept any proposal that would exclude some States. Such a proposal would be harmful to peace, freedom, the equality of peoples, and the interests of the United Nations.

25. The principle of universality had been supported by many Member States in statements to the General Assembly. Even President Nixon, whose country had sponsored the restrictive three-Power draft, had in that forum called for an "open world" (1755th plenary meeting). But it was impossible to have an open world if some sovereign States were to be excluded merely because their internal structure displeased the United States. Nothing was to be gained by clinging to the old dogmas of the Hallstein doctrine or the Vienna formula, which dated from the period of the cold war. The adoption of the three-Power draft would cause greater difficulties for the United Nations in its endeavours to promote international co-operation and the codification and progressive development of international law than those that would allegedly be caused for the Secretary-General by the adoption of the USSR draft. Discrimination in any form was inadmissible in the United Nations, and any formula that would not allow all countries to have access to the Convention should be rejected by the Committee.

26. While the representatives of several Western countries had been speaking out recently in favour of the principle of universality in the United Nations and had condemned discrimination against any States that were not yet Members, the non-aligned countries in Asia, Africa and Latin America had been waging a noble battle against racial, economic and commercial discrimination. Those countries were eager to participate in the activities of the interna-

tional community and were firm supporters of the principle of universality. They could hardly be expected to support a discriminatory, restrictive formula for the final clauses of the Convention.

27. Nevertheless, such a formula was now before the Committee. Its sponsors had been unable, unfortunately, to abandon their cold war policies and halt discrimination against the socialist countries. Through political shortsightedness, they had failed to take stock of the current positions of the socialist countries, and by refusing to deal with them on equal terms both in the United Nations and outside, they were damaging its authority and, since the maintenance of world peace needed the participation of all countries, its effectiveness.

28. It was strange that the principle of universality still needed to be confirmed in 1969, whereas in the nineteenth century international treaties had been open to all States. That practice had been continued in international administrative organization, as exemplified in the spheres of postal, telecommunication and copyright affairs, and in the conventions on the laws of war and neutrality. In the light of such well-established usage, the so-called Vienna formula was a retrograde step which conflicted with the progressive development of international law. However, the principle of universality had prevailed again in treaties designed to strengthen international security. The Treaty on the Non-Proliferation of Nuclear Weapons, for example, constituted a victory for the interests of the world community and the forces of common sense over the rigid and legalistic approach represented by the Vienna formula. The principle of universality had thus been accepted in an international instrument which even the opponents of that principle could not deny to be politically more significant than the draft Convention. That action had promoted the cause of universal peace and international co-operation. The fact that the Non-Proliferation Treaty enshrined the principle of universality was also a great step forward in the codification and progressive development of international law. There were other examples of the same process at work: the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, the Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water and the draft treaty on the prohibition of the emplacement of nuclear weapons and other weapons of mass destruction on the sea-bed and the ocean floor and in the subsoil thereof, submitted to the Conference of the Committee on Disarmament at Geneva in October 1969. All those treaties contained the same formula, which was progressive, fully in keeping with contemporary realities and an established part of international practice.

29. The Preamble of the Charter of the United Nations spoke of establishing "conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained", but that was impossible if sovereign States were denied access to those treaties. Nor could the principle stated in Article 2, paragraph 1, of the Charter be reconciled with discrimination and the unequal treatment of some States for the benefit of others. And if the aim expressed in paragraph 6 of Article 2 of the Charter was to be fulfilled, non-member States had to be offered every opportunity to implement

actively the principles enumerated in the preceding paragraphs of that Article. The main role of the United Nations was to maintain international peace and security. Whatever view—legal or political, moral or practical—was taken of that task, it was essential to eliminate the unfair restriction on the participation of all States in the codification and progressive development of international law, and in particular to confirm their unlimited capacity to accede to international conventions.

30. All States were equally and inalienably entitled to determine their political status and to enjoy the right to economic, social and cultural development. Every State should respect those rights and promote their enjoyment. They represented principles laid down in the Declaration on the Granting of Independence to Colonial Countries and Peoples and in the International Covenants on Human Rights. Those principles were supported by virtually all countries. Consequently, neither the economic nor the social structure of a State could be grounds for preventing it from participating in international treaties generally and the future Convention in particular. Looking ahead to agenda item 94 (a), he said that the aim embodied in the Declaration on Universal Participation in the Vienna Convention on the Law of Treaties was precisely what the Soviet Union was continually striving for and what it wished to see fulfilled in the future Convention on Special Missions.

31. His delegation was guided by considerations of principle and was not concerned with the right of any particular State to participate in the future Convention. However, since some delegations had questioned the right of the German Democratic Republic to participate in the future Convention, he wished to point out that the German Democratic Republic was an independent sovereign socialist State with an established position in the centre of Europe, the socialist commonwealth and the world community. The attempt to prevent it from joining actively in the life of the international community was contrary to the norms of international law and revealed narrow political interests. The Vienna formula conflicted with the spirit of the United Nations Charter by opening the door to countries such as the Federal Republic of Germany, South Korea and even South Viet-Nam while closing it to others like the German Democratic Republic, the People's Republic of Korea and the Democratic Republic of Viet-Nam. Since 1948, the German Democratic Republic had enjoyed full sovereign rights in accordance with the principles and aims of the Charter. It maintained diplomatic, consular and other relations with many States. It had consistently striven to promote European and world peace, general and complete disarmament, the peaceful settlement of international disputes and international equality and had condemned colonialism and racial discrimination wherever it appeared. It was a part to many multilateral treaties, including the Treaty banning nuclear weapon tests and the Treaty on the Non-Proliferation of Nuclear Weapons. A decision by the General Assembly to allow it and other socialist countries to participate in the future Convention would accord with the Charter and the principle of universality and would serve to strengthen the interests of international equality and legality without harming any other interests. It was time to end a form of discrimination which had impeded the progress of the developing countries and was simply a

vestige of the cold war. The existence of the German Democratic Republic alongside the Federal Republic of Germany was an established fact which made the continuance of discrimination against the former absurd.

32. The draft Convention was the result of prolonged work by the Committee, which he thought would wish to ensure that the new segment of diplomatic law was universally accepted. Its effectiveness would depend on the accession to it of the maximum number of States. The breadth of view which had characterized the Sixth Committee's deliberations should be sufficient guarantee that all those States which desired the reinforcement of peace and security, the expansion of international co-operation and the proper functioning of the United Nations would favour the participation of all countries in a general multilateral convention concluded under its auspices.

*Tribute to the work of the Expert Consultant*

33. The CHAIRMAN said he would like to express the Sixth Committee's deep gratitude, and his own, to the

Expert Consultant for his valuable contributions to its debate on the draft Convention. His knowledge and wisdom had been of great benefit to the Committee, which desired to assure him of its profound respect and admiration for his outstanding qualities and of its best wishes for further distinction in his future work.

34. Mr. BARTOS (Expert Consultant) said that his task at both sessions had been to present and explain the International Law Commission's draft articles on special missions. He hoped that his temperament had never interfered with that duty; if at times he had been passionate, it had been out of a firm conviction that the draft articles were of great value. He was grateful to the Committee for having understood his intentions and the Commission's aims and thanked it for all it had done to ensure the successful conclusion of a third chapter in the history of United Nations diplomatic law.

*The meeting rose at 12.50 p.m.*