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Agenda item 85:

Draft Convention on Special Missions (*con-
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Chairman: Mr. K. Krishna RAO (India).

AGENDA ITEM 85

Draft Convention on Special Missions (*continued*)
(A/6709/Rev.1 and Corr.1, A/7156 and Add.1 and
2; A/C.6/L.646, A/C.6/L.707/Rev.1, A/C.6/L.709,
A/C.6/L.729, A/C.6/L.730, A/C.6/L.731)

Article 29 (*Personal inviolability*) and article 31
(*Immunity from jurisdiction*) (*continued*)

1. Jonkheer van PANHUYS (Netherlands) said that his delegation's sub-amendments (A/C.6/L.730, A/C.6/L.731) to the French and Chilean amendments to article 31 (A/C.6/L.709, A/C.6/L.729), would make the same addition to both texts. His delegation had proposed the insertion of a similar provision in the Vienna Convention on Diplomatic Relations. Although the proposal had not been accepted at the 1963 United Nations Conference on Consular Relations, the same question had been raised by the United Kingdom delegation—and supported by the Netherlands delegation—and as a result article 43, paragraph 2 (b), of the Convention on Consular Relations stated that immunity from jurisdiction would not apply in respect of a civil action by a third party for damage arising from an accident in the receiving State caused by a vehicle, vessel or aircraft.^{1/}

2. In countries where the victim of a road accident could not sue an insurance company directly but was obliged to bring an action for damages against the person alleged to have caused the accident, difficulties arose if the latter was a person enjoying diplomatic immunity. Insurance policies often stipulated that the diplomat insured was not to waive his immunity. The purpose of the Netherlands sub-amendment was to remedy that situation, which was clearly unjust. It was not always easy to determine whether or not a diplomatic or consular agent was driving his car in connexion with his official functions, and the Netherlands delegation believed that in all circumstances a third party should be able to bring a civil action for damages arising out of a traffic accident,

^{1/} See United Nations Conference on Consular Relations, Official Records, vol. II (United Nations publication, Sales No.: 64.X.1) document A/CONF.25/C.2/L.139, p. 89; *ibid.*, document A/CONF.25/L2, p. 182.

regardless of whether the driver was a consular or diplomatic agent or a member of a special mission.

3. His delegation had not submitted an amendment to the International Law Commission's text of article 31, because paragraph 2 (d) of that text provided that immunity from jurisdiction would not apply in the case of an action for damages arising out of an accident caused by a vehicle used by a member of a special mission outside his official functions. Although that provision was not as extensive as his delegation would have wished, it could have supported the Commission's text of the article. However, since the Chilean and French amendments to article 31 would delete paragraph 2 of the Commission's text, his delegation had felt obliged to raise the question again.

4. The purpose of the sub-amendments was not merely to reduce the scope of the immunities accorded to special missions but to lay down a principle which should be recognized in any treaty concerning immunities. Although article 43, paragraph 2 (b) of the Convention on Consular Relations referred also to accidents caused by vessels or aircraft, it seemed unnecessary to deal with such cases in the present context. For the same reason, the sub-amendment did not include the exception to immunity stated in article 43, paragraph 2 (a) of the Convention on Consular Relations. However, his delegation would have no objection if the Committee wished to extend the scope of the sub-amendments.

5. Mr. SPERDUTI (Italy) said that his delegation had come to the conclusion that the best way of utilizing the results of the International Law Commission's work on part II of the draft articles (Facilities, privileges and immunities) would have been to follow the system advocated by the United Kingdom delegation in the debate on article 21 (see 1055th meeting), whereby only high-ranking special missions would be accorded the same treatment as diplomatic missions proper. Where the Commission's draft departed from a strictly functional approach, the solutions advocated by the Commission could be justified only by the high rank of the persons composing special missions. The fact that a person represented the sending State did not justify the treatment provided for in articles 29 and 31, for if that were the case, the same treatment should also be accorded to members of the special mission other than State representatives and members of the diplomatic staff, i.e., to the persons referred to in article 14, paragraph 2.

6. However, since the Sixth Committee had approved the Commission's text of article 21 with little change, his delegation now favoured the global but detailed system proposed by the French delegation (*ibid.*). If a single general category of special missions was

to be established, comprising all the special missions covered by the definition in article 1, it would be wise to adopt a purely functional approach. In that connexion, the Convention on the Privileges and Immunities of the United Nations and the Convention on the Privileges and Immunities of the Specialized Agencies both reflected a basic functional approach, and were both of great practical value. Moreover, his delegation had understood certain passages of the Commission's commentary on the draft articles, in particular the first part of paragraph (4) of its general considerations on part II, as indicating a preference for a functional approach.

7. His delegation did not subscribe to the theory that diplomatic privileges and immunities were based on the principle *ne impediatur legatio*. On the contrary, they were largely the result of long-standing customs and traditions. In the past, ambassadors had been the personal representatives of the Head of State, who was a monarch and regarded as a sacred person. Ambassadors had therefore been accorded treatment in keeping with their status as the representatives of a sacred person. International practice in the matter had remained stable—although the concepts on which it was based had been somewhat modified—and had been codified in the Vienna Convention on Diplomatic Relations. While that Convention should be taken into account, it should not be regarded as the ideal model on which to base the treatment to be accorded to missions other than diplomatic missions. His delegation supported in principle the French amendments to article 29 (A/C.6/L.707/Rev.1) and article 31 (A/C.6/L.709), but improvements could be made to them in the light of the comments made by delegations. For example, the expression "crime or serious offence" in paragraph 2 of the French amendment to article 29 might lead to difficulties, because it reflected ideas which were not common to all legal systems.

8. Although the Chilean amendment to article 31 (A/C.6/L.729) had considerable merit, his delegation could not fully support it because, like the Commission's text, it would grant full immunity from the criminal jurisdiction of the receiving State. In practice, a member of a special mission found guilty of a serious breach of the criminal law of the receiving State could hardly expect to continue to exercise his functions in that State. At the very least, he would be declared *persona non grata*, with all the consequences that that would entail. It was therefore difficult to maintain that immunity from criminal jurisdiction was a functional necessity for special missions. Immunity from criminal jurisdiction was granted to diplomatic agents partly for historical reasons, and his delegation believed that great caution should be exercised in granting such immunity to persons who were not diplomatic agents.

9. The Netherlands sub-amendments (A/C.6/L.730, A/C.6/L.731) also called for great caution, and he would study them carefully before expressing any opinion.

10. Mr. ALVAREZ TABÍO (Cuba) said that personal inviolability was essential if a State representative was to perform his important functions. That principle should take precedence over considerations of public

order, especially in the case of State representatives. As provided in article 29 of the Vienna Convention on Diplomatic Relations, personal inviolability should be indivisible, and no distinction should be drawn between acts committed in the exercise of official functions and acts committed in a private capacity. His delegation endorsed the International Law Commission's decision to base its draft on generally accepted diplomatic norms, which could be scaled down as necessary in specific cases. It could therefore not accept the French amendment to article 29 (A/C.6/L.707/Rev.1).

11. Immunity from jurisdiction was a political rather than a juridical issue, and it was for the sending State to decide whether or not it wished to waive its rights. In principle, special missions should be accorded the fullest privileges and immunities, unless there was an agreement to the contrary. His delegation would therefore support the Commission's text of articles 29 and 31.

12. Mr. VIALI (South Africa) said that his delegation was not opposed to the principle of immunity from arrest and detention laid down in article 29, but the French amendment (A/C.6/L.707/Rev.1) raised serious difficulties. The interpretation of the expression "crime or serious offence" in paragraph 2 would vary from country to country and from court to court. In some legal systems, the terms "crime" and "offence" were almost synonymous. If the French amendment was adopted, the word "serious" should be placed before the word "crime" rather than before "offence" in the English text. Paragraph 3 of the French amendment seemed almost a contradiction in terms. It seemed to imply that in the case of a serious crime or offence no definitive judicial ruling was necessary—which could not, of course, be the intention. The paragraph as now worded could also be interpreted as meaning that a member of a special mission might be liable to imprisonment—though not arrest—for any offence at all, provided only that the imprisonment was pursuant to a definitive judicial ruling. He understood from the French representative's statement at the 1069th meeting that such an implication was not intended. If the amendment was approved, the Drafting Committee should consider altering the text—or at least the English text—so as to reflect the real intentions of the French delegation. His delegation would support the International Law Commission's text of article 29.

13. His delegation could not support the French amendment to article 30 (A/C.6/L.708) for the reasons stated by the Venezuelan representative at the 1069th meeting. With regard to article 31, the amendments of France (A/C.6/L.709) and Chile (A/C.6/L.729) would restrict the immunity from jurisdiction accorded to representatives of the sending State in the special mission and the members of its diplomatic staff to acts performed in the exercise of their functions. His delegation could not support the French amendment, because it would accord only qualified immunity from the criminal jurisdiction of the receiving State and made no provision for such matters as the giving of evidence and execution against property. His delegation was favourably impressed by the Chilean amendment, because in certain situations there might

be good reason for limiting immunity from civil and administrative jurisdiction to acts performed in an official capacity. In that connexion, he welcomed the Netherlands sub-amendment (A/C.6/L.731). However, before adopting a final position on article 31, his delegation would be interested to hear the views of other delegations, especially regarding the question whether the four exceptions set out in paragraph 2 of the Commission's text went sufficiently far to meet the needs of the existing practice of States.

14. Mr. ANDRIAMISEZA (Madagascar) said that the question raised by articles 29 and 31 was extremely important, because the success of a special mission depended to a large extent on the status accorded to its members. On the one hand, the members of the mission should enjoy all the freedom necessary for the performance of their task; if they had to work in a climate of insecurity and ran the risk of arbitrary measures against their persons and property, they could not perform their task properly. On the other hand, caution was required to ensure that the system adopted did not serve to protect personal interests instead of promoting the success of the mission. It was difficult to gauge the precise degree of inviolability and immunity which was strictly essential for the performance of the mission's task in such a way as to obviate any abuse.

15. The solution adopted by the International Law Commission in article 29—to provide total personal inviolability for members of special missions, placing them on the same footing as diplomatic agents—was perhaps the simplest course, but while a sending State would find it quite satisfactory, a receiving State might not. The French amendment to that article (A/C.6/L.707/Rev.1) excepted from the general rule of inviolability arrest or preventive detention in the case of a crime or serious offence and following a definitive judicial ruling. Such a reservation could be justified on a number of grounds. First, special missions could not be totally assimilated to diplomatic missions. They lacked the basic characteristics of diplomatic missions, namely, stability, an established geographic location and accreditation.

16. Secondly, although the notion of special missions had not yet been defined, it was generally agreed that they were technical in character. It was valid and legitimate, therefore, to raise the question of representativeness. If, in addition to that, it was remembered that special missions would increase in number, it was reasonable to consider that the range of application of total inviolability should not be excessively extended. The amendment did, however, give rise to certain difficulties. On what criterion, for instance, was the determination of "serious offence" to be based? The French representative had referred (1069th meeting) to offences punishable by more than five years' imprisonment. Would it not be logical, however, for offences for which judges could not give a suspended sentence or declare extenuating circumstances to be included in that category? Then there were offences universally recognized as minor but classified as real crimes by developing countries in order to combat certain trends and factors militating against development. Would sending States agree that such offences, although in their own territories punish-

able only by a few months' imprisonment, should be classified as serious offences? Even more important, in the case of a conflict of opinion, would the decision be taken by the sending or the receiving State?

17. The second limitation, namely, imprisonment only in pursuance of a definitive judicial ruling, did not appear to give rise to difficulties. Nevertheless, before that ruling could be given, a whole series of legal procedures, if not police measures, would have to be followed. The danger lay not so much in the effects of the ruling but in the preparatory measures, particularly as the text proposed appeared to make no distinction between crimes, offences and contraventions.

18. Despite those comments, his delegation considered that the principle of introducing reservations on the question of criminal inviolability should be maintained, subject to subsequent delimitation of the exact areas to which the reservations would apply. Madagascar, therefore, favoured the French amendment.

19. The amendments to article 31 submitted by the delegations of France (A/C.6/L.709), the Netherlands (A/C.6/L.730) and Chile (A/C.6/L.729) were attractive. It was logical to grant immunity only if the acts had been performed strictly in the exercise of official functions. The idea of acts thus performed was, however, very elastic and gave rise, even in domestic law, to complications and difficulties not easily solved and liable to lead to conflicts between States and to impair the mission's task. His delegation would therefore vote in favour of the Commission's text and against the amendments unless other factors emerged before the vote.

20. Mr. OGUNDERE (Nigeria) said that the purpose of immunities was to protect the interests of the sending State, not those of persons belonging to the special mission. That was precisely the idea behind articles 29 and 31, which complemented each other; the principle of inviolability proclaimed in article 29 was buttressed by the procedural questions set out in article 31.

21. With regard to the French amendments (A/C.6/L.707/Rev.1, A/C.6/L.709), it should be noted that special missions were not juridically functional in character, as was the régime of consular relations on which the amendments were based. Nigeria would have difficulty, therefore, in accepting those amendments. In any case, articles 29 and 31 should not be read in isolation but in conjunction with article 41, which safeguarded the honour of the sending State and the interests of the receiving State, article 42, which in respect of civil claims placed an obligation on the sending State to waive its immunity when that could be done without impeding the performance of the functions of the special mission, article 36, which limited the immunities of the administrative and technical staff of special missions, and article 50, paragraph 2 (c). Nigeria was therefore unable to support the French amendments. The same arguments applied to the Chilean amendment to article 31 (A/C.6/L.729).

22. His delegation's first reactions to the Netherlands sub-amendments (A/C.6/L.730, A/C.6/L.731), which

it had not had time to study carefully, were that the objections of the Netherlands delegation were met to a large extent by the provisions of article 31, paragraph 2 (d) and articles 41 and 42.

23. Mr. MOTZFELDT (Norway) considered that the International Law Commission's text of article 29 went too far; Norway would prefer restrictions both on the privileges and immunities accorded and on the range of persons to whom they applied. As drafted, the article did not fully correspond to current international law and it was doubtful that a normal special mission would really require such extensive privileges and immunities in order to be able to perform its functions.

24. The Norwegian delegation would support the French amendment (A/C.6/L.707/Rev.1), which met many of its reservations concerning article 29 and maintained the important principle of personal inviolability except for cases involving crime or serious offence. It was not unreasonable that a member of a special mission committing a grave crime in the receiving State should run the risk of being arrested. Obviously, such action would be taken only after the receiving State had considered very carefully all the interests involved, including those of the sending States. Obviously, too, the principle of good faith would be adhered to by all the parties concerned. It should be remembered, in that connexion, that persons enjoying privileges and immunities were obliged in international law to respect the laws of the sending State and that a receiving State always had the right to intervene, even with force, to prevent a privileged person from committing or continuing a crime. Thus it had been found necessary and acceptable to limit the principle of inviolability in relations between States even for persons enjoying full privileges and immunities.

25. As previous speakers had pointed out, the expression "crime or serious offence" had no fixed content. Penal codes differed from country to country. However, as the words "grave crime" were used in article 41, paragraph 1, of the Convention on Consular Relations, the term used in the French amendment might be accepted in principle. It seemed to his delegation that the French delegation should have referred in its proposal to article 9, which stated that members of a permanent diplomatic mission taking part in a special mission retained their privileges and immunities as members of the diplomatic mission.

26. Despite the clear difference in substance between the Commission's text and the French text, it might be possible to combine them in such a way that the representatives of the sending State in a special mission would enjoy the inviolability provided for in the Commission's text and the members of the diplomatic staff of the special mission the inviolability provided for in the French proposal. The extension of full inviolability to those persons in the special mission who were in fact representing the sending State would be acceptable to his delegation.

27. The provisions of article 31 were also excessive. His delegation would therefore vote in favour of either the French amendment (A/C.6/L.709) or the Chilean amendment (A/C.6/L.729).

28. With regard to the Netherlands proposals (A/C.6/L.730, A/C.6/L.731), which it had been unable to study thoroughly, his delegation's first reaction was that they provided for a problem which often arose in practice.

29. Mr. JAFRI (Pakistan) said that, in its contribution to the discussions, his delegation had been guided by the fact that the nature and functions of special missions were different from those of permanent diplomatic missions. The facilities, privileges and immunities accorded to special missions should therefore be less elaborate than those accorded to permanent missions. As special missions were appointed for a specific period of time, some of the provisions applicable to them could neither be identical with nor based upon the provisions of the Vienna Convention on Diplomatic Relations. However, the International Law Commission had been right in basing itself, wherever possible, on the provisions of that Convention. In view of the commentary on article 29 and the statement made by the Expert Consultant (1069th meeting) Pakistan supported the Commission's text of the article.

30. The French amendment to article 29 (A/C.6/L.707/Rev.1) attempted to accord to receiving States, in certain circumstances, authority over the members of the special mission greater even than that accorded by the Convention on Diplomatic Relations. As the scope and functions of special missions were limited, the extension of the jurisdiction of the receiving State appeared unnecessary. In any case, the members of the special mission would continue to be under the jurisdiction of the sending State; it seemed undesirable, therefore, that the receiving State should exercise its jurisdiction over them in cases of serious crime or flagrante delicto.

31. Pakistan did, however, favour the French proposal concerning article 31 (A/C.6/L.709), which explained succinctly the limits within which members of special missions should enjoy privileges and immunities. His delegation reserved the right to comment on the amendment of Chile (A/C.6/L.729) and the sub-amendment of the Netherlands (A/C.6/L.731) later.

32. Mr. LIANG (China) said it had been suggested that articles 29 and 31 were closely linked and might be merged. His delegation would be reluctant to support such a merger. The function served by the articles was different. Article 29 imposed on receiving States the duty to ensure that the persons of the representatives of the sending State in ordinary diplomatic missions or special missions were inviolable and to take appropriate steps to prevent any attack on their persons, freedom or dignity. Indeed, many States had enacted domestic legislation to give effect to the principle enunciated in article 29.

33. It would be seen from the works of jurists that the principle of inviolability was separate from that of immunity from jurisdiction. In the practice of States, the same distinction was often observed. For example, in the memorandum sent to the Secretariat of the United Nations in connexion with the compilation of volume VII of the United Nations Legislative Series,

Laws and Regulations regarding Diplomatic and Consular Privileges and Immunities,^{2/} the Swiss Government had devoted a whole section exclusively to the subject of diplomatic inviolability and a separate section to the "other diplomatic privileges and immunities", including immunity from jurisdiction.^{3/} In any case, since the system of law enforcement differed from country to country, it was difficult to generalize. In some systems the police formed part of the law enforcement machinery but in others they did not and could make precipitate arrests. In the latter case, the only way to avoid detention was to have a writ of habeas corpus. The United Kingdom Diplomatic Immunities Act of 1952 included the expression "immunity from suit and legal process",^{4/} and in contemporary English law "suit and process" included arrest and detention; but the same was not necessarily true in other countries. The idea that arrest and detention might be a possible way of violating immunities had existed at the time of Queen Anne's Act of 1708.^{5/} Similarly, the United States statutory provisions on diplomatic immunities contained the idea that detention and arrest were merged into the legal process.

34. As to the question whether the International Law Commission's text should be retained, the Chinese delegation considered that in a convention such as the one under discussion it was preferable to provide for a standard of conduct that took account of the fact that it was often easier to negotiate reductions than increases. Obviously, there would have to be negotiations before a special mission was sent or received, but there was little likelihood that the sending State of a "mini" special mission would insist on an exaggerated range of privileges and immunities. If it did, the receiving State would refuse to grant them and there would be no special mission. In general, his delegation would prefer to maintain the standards of conduct provided for in the Commission's text rather than set out in advance restrictive standards which might hamper the functioning of special missions.

35. Mr. DADZIE (Ghana) said that special missions should not be treated in every way like permanent diplomatic missions, but his delegation did not agree that some special missions should be accorded only the privileges and immunities granted to consular missions. The rule to be established in each article of the Convention should depend on the nature and extent of the privilege or immunity concerned. As a general rule, the level of privileges and immunities accorded to special missions should be higher than that accorded to consular missions but lower than that accorded to permanent diplomatic missions. In some cases, however, special missions should receive the same privileges and immunities as diplomatic missions and in exceptional cases even more extensive ones. There was no justification for granting to the representatives of the sending State in the special mission and the members of the mission's diplomatic staff a lesser degree of personal inviolability than that granted to

members of permanent diplomatic missions. It was impossible to accept a situation in which a person normally of diplomatic rank should have his personal inviolability reduced because he was a member of a special mission. Ghana would therefore vote in favour of the International Law Commission's text of article 29 and against the French amendment (A/C.6/L.707/Rev.1).

36. His delegation supported the provision made in paragraph 1 of article 31. It did not agree that immunity from the criminal jurisdiction of the receiving State should be limited to acts performed in the exercise of the functions of the members of the special mission and within the limits of the powers of those members, and it was therefore unable to support the French amendment to article 31 (A/C.6/L.709). Although his delegation agreed in principle with the provisions relating to civil and administrative jurisdiction in the Commission's draft, it was inclined to accept the limitations proposed by the Chilean delegation (A/C.6/L.729). On article 31, therefore, Ghana would vote for the Chilean amendment and, if that was rejected, for the Commission's text.

37. The Netherlands sub-amendments (A/C.6/L.730, A/C.6/L.731) did not improve the texts of the French and Chilean amendments to article 31; the Ghanaian delegation would therefore vote against them.

38. His delegation reserved the right to speak on article 30 later if necessary.

39. Mr. SONAVANE (India) said that the basic question posed by articles 29 and 31 was whether State representatives in a special mission and the members of its diplomatic staff should be given privileges of personal inviolability and jurisdictional immunity comparable to those of consular officials under the Vienna Convention on Consular Relations or of diplomatic agents under the Vienna Convention on Diplomatic Relations. The French amendments to articles 29 and 31 (A/C.6/L.707/Rev.1, A/C.6/L.709) assimilated those articles to articles 41 and 43 of the Vienna Convention on Consular Relations. The Czechoslovak representative had therefore been correct, at least on the substance, in drawing the Committee's attention to that basic question at the 1068th meeting. The International Law Commission had already taken a decision on the question, as reflected in its proposed articles 29 and 31 and specifically stated in the general considerations introducing part II; the Commission had based its text on the corresponding provisions of the Vienna Convention on Diplomatic Relations, with only such departures as were necessitated by the nature of special missions. His delegation was in basic agreement with the Commission's decision. The special missions covered by the Convention would be missions having a representative character, for although special missions might be sent to perform various tasks, they all represented the sending State in the receiving State in respect of their specific task and, moreover, they would negotiate with the authorities of the receiving State within the scope of that task. That clearly meant that, even on the basis of functional considerations alone, the privileges of personal inviolability and jurisdictional immunity of representatives of the sending State in special missions should be com-

^{2/} United Nations publication, Sales No.: 58.V.3.

^{3/} *Ibid.*, pp. 306-310.

^{4/} *Ibid.*, p. 348.

^{5/} *Ibid.*, p. 347

parable to those of diplomatic agents rather than to those of consular agents. If the two States wished in particular cases to reduce those privileges by agreement, they could do so under article 50. His delegation therefore endorsed articles 29 and 31 as drafted by the Commission, and could not support the French amendments to those articles.

40. The Chilean amendment to article 31 (A/C.6/L.729) referred only to immunity from civil and administrative jurisdiction, but even within that limited field his delegation could not agree that representatives in the special mission and members of its diplomatic staff should be treated on a par with consular officials. It was not impressed by the argument that they should be so treated because of the temporary character of special missions, and it endorsed the argument of the Guatemalan representative (1069th meeting) on that point. His delegation therefore could not support the Chilean amendment.

41. If state representatives in special missions abused their privileges by committing crimes under the ordinary law such as murder or rape, the solution to that problem must be the same as it was when diplomatic agents abused their privileges; in such cases the sending State should waive the immunity in question. In any case, members of special missions who committed such crimes were not exempt from the jurisdiction of the sending State.

42. Mr. REIS (United States of America) said that the International Law Commission's inclusion of paragraph 2 (d) in article 31 was a welcome beginning of recognition in the international community that in an era of motor travel the old idea of absolute immunity was intolerable from the human point of view. His delegation welcomed the Netherlands' sub-amendments (A/C.6/L.730, A/C.6/L.731) and would have liked a further amendment to article 29 on those lines, since that article, while acceptable, did rather overstate the matter. The remarks of the Norwegian representative on that point were very well taken. Personal inviolability did not mean absolute immunity; certainly personal inviolability did not mean that a diplomatic official apprehended in the act of committing a crime must be permitted to continue his action.

43. He expressed approval of the Chilean delegation's amendment (A/C.6/L.729) to article 31, particularly the proposed new paragraph 4. Except for considerations of dignity and prestige common to all countries, he could not agree that it would be intolerable for the diplomatic staff of special missions to be subject to civil jurisdiction. While his Government did not feel strongly about the matter, it did not think that the Chilean amendment should be dismissed by the irrelevant argument that the privileges and immunities of members of special missions should not be as limited as those of consular officials.

44. Mr. COX (Sierra Leone) said that the Committee, itself composed of diplomats, might be in danger of holding diplomats in too high a regard as compared with members of special missions. Some tasks performed by special missions did not differ much from tasks performed by diplomatic missions.

45. The Vienna Convention on Diplomatic Relations, which the International Law Commission had taken

as the basis for its text, had been drafted with a view to harmonizing different opinions and on the basis of considerations of practicality and experience. The Chilean amendment to paragraph 2 of article 31 (A/C.6/L.729) would imply distinguishing between matters subject to criminal jurisdiction and matters subject to civil and administrative jurisdiction—which would be difficult, since what might be treated as an administrative matter in one country might be regarded as a criminal matter in another. The Chilean amendment to paragraph 4 (*ibid.*) was not sufficiently broad.

46. The wisdom contained in the Vienna Convention on Diplomatic Relations should serve as a guide to the Committee. On the question of immunity from jurisdiction, the Committee should bear in mind that every sending State had an interest in ensuring that its representatives were persons of good conduct who would represent its interests properly. The French amendment to article 29 (A/C.6/L.707/Rev.1) was unacceptable, since the expression "a crime or serious offence" could not be defined, and its drafting was too loose. Accordingly, his delegation would support the Commission's text of articles 29 and 31 and would not support the French and Chilean amendments (A/C.6/L.707/Rev.1, A/C.6/L.709, A/C.6/L.729).

47. Mr. EL REEDY (United Arab Republic) said that his delegation in general supported articles 29, 30 and 31 as prepared by the International Law Commission. It believed that the personal inviolability of State representatives in special missions was an essential principle, and that in that respect members of special missions should be treated in the same way as diplomatic agents. In many cases the members of special missions performed tasks no less important than those performed by permanent diplomatic representatives, and their personal inviolability was therefore an important, and indeed an essential, requirement for the proper functioning of special missions. The same considerations applied to the inviolability of their private accommodation; a clear enunciation of that principle would strengthen the institution of the special mission. Special missions therefore could not appropriately be compared with consular posts, and consequently his delegation could not support the French amendments to articles 29 and 30 (A/C.6/L.707/Rev.1, A/C.6/L.708).

48. Regarding article 31, his delegation favoured the unrestricted approach adopted by the Commission to the question of immunity from criminal jurisdiction. On the question of immunity from civil jurisdiction, it considered that a cautious and discriminating approach would be more appropriate because of the nature of civil liability. His delegation therefore supported the Chilean amendment (A/C.6/L.729), which seemed to strike a reasonable balance. It also favoured the Netherlands sub-amendment (A/C.6/L.731), which would in no way affect the functioning of special missions but would ensure the rights of third persons in the case of traffic accidents. In view of the almost universal system of motor vehicle accident insurance, that sub-amendment would seem to be appropriate.

49. Mr. CASTRÉN (Finland) said that articles 29, 30 and 31 were necessary to guarantee the functioning of special missions and the freedom of action of representatives in them and their diplomatic staff.

The privileges and immunities dealt with in those articles covered to some extent the private activities of the persons concerned, for the same reasons that the protection of the persons of the head and of the diplomatic staff of diplomatic missions had been extended beyond their official activities. By approving article 9 (1051st meeting), the Committee had recognized the fact that special missions might include not only representatives but also diplomatic staff, and it was therefore logical to accord that staff roughly the same legal status as diplomats in general, rather than give them only certain limited privileges and immunities as proposed in the French amendments (A/C.6/L.707/Rev.1, A/C.6/L.708, A/C.6/L.709). State representatives in special missions who led their missions or normally had a position of higher rank than the diplomatic staff should, of course, enjoy the rights enjoyed by the members of the diplomatic staff. The principle of personal inviolability dealt with in article 29 was of special importance in that respect, and his delegation accordingly could not accept the restrictions on the principle proposed in the French amendment to that article. The principle of the inviolability of private accommodation was also very important, because part of the special mission's work was done in private and official documents were often kept in such accommodation. Consequently his delegation was unable to support the French proposal for the deletion of article 30.

50. Regarding article 31, his delegation considered that immunity from the criminal jurisdiction of the receiving State should be absolute for representatives and diplomatic staff. Immunity from civil and administrative jurisdiction could be restricted, as in the Vienna Convention on Diplomatic Relations and in article 31, paragraph 2, of the International Law Commission's text. It might be possible to accept the Chilean amendment to paragraph 2 (A/C.6/L.729) with the Netherlands sub-amendment (A/C.6/L.731), since the result would not be very different from the Commission's text; but his delegation thought it wiser to maintain the present wording drawn from a Convention already in force. His delegation preferred the Commission's text to the Chilean amendment to paragraph 4, as making it clear that immunity from criminal jurisdiction also covered all measures of execution.

51. His delegation would vote for articles 29, 30 and 31 as drafted by the Commission.

52. Mr. OWADA (Japan) said that the difference of views in the Committee regarding articles 29 and 31 reflected the difference concerning the type of *ad hoc* missions to be covered by the Convention. A proper

balance should be struck between the principle of functional necessity, which required that special missions should be granted the privileges and immunities needed for the proper performance of their functions, and the rights of the citizens of the receiving State. It had been contended that, since the special missions covered by the convention were defined in article 1 (a) as being of a representative character, the privileges and immunities accorded to members of special missions should be those accorded to the members of permanent diplomatic missions on the basis of the representation theory. His delegation had considerable doubts as to the wisdom of that approach, since special missions had intrinsic characteristics distinguishing them from permanent missions, such as the performance of specific functions, and temporary character.

53. The issue was not whether to equate the status of special missions with that of permanent diplomatic missions or that of consular missions; the sole question was whether a particular privilege or immunity was essential for the functioning of the special missions. Considered in that light, the privileges and immunities provided in articles 29 and 31 went somewhat further than was required for the proper performance of the functions of most special missions. His delegation was prepared to accept wider privileges and immunities for a special mission when they were warranted by its functions, nature or composition and when the scope of their application was made clear and sufficiently circumscribed. In the absence of clarity and circumscription, his delegation considered it wiser to give the States concerned the possibility of extending the privileges and immunities of specific special missions. His delegation supported the French amendments to articles 29 and 31 (A/C.6/L.707/Rev.1, A/C.6/L.709). If the majority found it difficult to support those amendments, however, the Chilean amendment to article 31 (A/C.6/L.729) might be a useful compromise text and would be acceptable to his delegation.

54. The question of civil liability arising out of traffic accidents had become an increasingly serious problem in recent years and had been causing a great deal of difficulty in his country as in others. Members of the public, who were innocent victims of such accidents, naturally felt aggrieved when deprived of a remedy by the jurisdictional immunity of persons responsible for the accident. His delegation therefore supported the Netherlands sub-amendments (A/C.6/L.730, A/C.6/L.731) as a very useful initiative.

The meeting rose at 6 p.m.

